

***United States Court of Appeals
for the Second Circuit***



APPENDIX

74-2120

ORIGINAL

In The

United States Court of Appeals

For The Second Circuit

DORMAN L. BAIRD and DORIS J. BURNS, as
Administratrix of the Goods, Chattels and Credits which were of
WENDEL M. BURNS, deceased, and DORIS J. BURNS,
individually,

Plaintiffs-Appellants,

- against -

DAY & ZIMMERMAN, INC., REVERE COPPER & BRASS,
INC., and LEAR SIEGLER CO. INC.,

Defendants,

- and -

HARVEY ALUMINUM (Incorporated),

Defendant-Appellee.

*On Appeal from the United States District Court for the
Southern District of New York.*

JOINT APPENDIX

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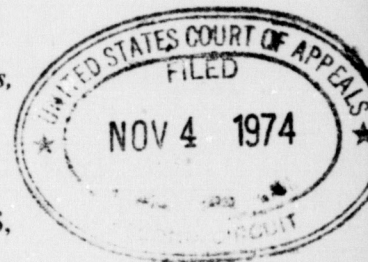
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DOCKET ENTRIES

JAI

CIVIL DOCKET
UNITED STATES DISTRICT COURT

JUDGE CANNELLA

Jury demand date:
9/28/71 by Deft. Revere

71 CIV. 3205

D. C. Form No. 106 Rev.

TITLE OF CASE

ATTORNEYS

DORMAN L. BAIRD
DORIS J. BURNS as Administratrix of the Goods,
Chattels and Credits which were of WENDELL
M. BURNS, Deceased and DORIS J. BURNS

For plaintiff:

JULIEN GLASER-BLITZ & SCHLESINGER,
2 Lafayette St.
New York 10007 (962-8020)

vs.

DAY & ZIMMERMAN INC.
REVERE COPPER & BRASS INC. -dism. 8-26-71
HARVEY ALUMINUM CO. INC. - dismissed 7-30-74
LEAR SEIGLER CO. INC.

For defendant:

Walsh & Frisch (for deft. Lear Siegle
250 Park Ave. NY 10017 MI 7-7161
D'Amato, Costello & Shea (for Revere C
116 John St. NY 10038 BA 7-5189
Shea, Gould, Climenko & Kramer (Day &
330 Madison Ave. NY 10017 MO 1-320
DEWY, BALLATINE, BUSHBY, PALMER &
140 B'way., NYC 10005
(deft. Harvey Aluminum)

STATISTICAL RECORD

COSTS

DATE

NAME OR
RECEIPT NO.

REC.

D.

J.S. 5 mailed

x

Clerk

2/18/71

Julien S

15

J.S. 6 mailed

Marshal

7/2/74
8/13/74
8/15/74

Julien S
Treas

5

15

5

Basis of Action:

Per. Inj. Wrongful Death
9,000,000.00

Docket fee

Witness fees

Action arose at:

Depositions

Dorman L. Baird et al vs. Day & Zimmermann Inc. et al

71 CW. 320 8

DATE	PROCEEDINGS	Date Of Judgment
Jul 19-71	Filed complaint and issued summons.	
Aug.17-71	Filed Order enlarging the deft. Lear Siegler, Inc.'s time to answer complaint to 9/17/71. Motley, J. (mailed notice).	
Aug.19-71	Filed stipulation and order extending deft. Harvey Aluminum (Inc.)'s time to answer complaint to 9/20/71. So ordered. Motley, J.	
Aug.23-71	Filed stip and order that the time for deft. Revere Copper & Brass, Inc. to answer complaint is ext. from 8-6-71 to 8-27-71. So Ordered: Motley, J.	
Sep.1-71	Filed stip and order that the time for deft. Revere Copper & Brass Inc., to answer is ext. from 8-27-71 to 9-9-71. Wyatt, J.	
Sep.8-71	Filed deft. Harvey Aluminum Inc. answer to plttfs' interrogs.	
Sep.17-71	Filed deft. Lear Siegler, Inc. answers to plttf. interrogs.	
Sep.17-71	Filed stip and order that the time for deft. Revere Cooper & Brass Inc. to answer is ext. from 9-9-71 to 9-24-71. So Ordered; McLean, J.	
Sep.20-71	Filed stip and order that the time for deft. Harvey Aluminum Inc. to answer complaint be ext. to 10-20-71 from 9-20-71. Croake, J.	
Sep.21-71	Filed stip. and order that the time for deft. Day & Zimmermann, Inc. to answer complaint and plttfs' interrogs. be adjourned to 10-5-71. So Ordered; Croake, J.	
Sep.22-71	Filed ANSWER of deft. Lear Siegler, Inc. to complaint.	W8
Sep.28-71	Filed ANSWER of deft. Revere Copper & Brass, Inc., and jury demand.	DC
Oct.7-71	Filed Answers to Plaintiffs' Interrogatories.	SCG
Oct.7-71	Filed ANSWER of deft. Day & Zimmerman to complaint.	
Oct.18-71	Filed Summons with Marshal's ret. Served; Day & Zimmermann by Lynn B. Leding on 7-23-71 Revere Copper & Brass by Mr. Albert L. Molowa, on 7-20-71 Harvey Aluminum by R.J. Kelly, on 7-21-71 Lear Siegler, by Mr. Zole on 7-28-71	
Oct.21-71	Filed ANSWER of deft. Harvey Aluminum, to Complaint	DBBP
Oct.18-71	Filed Interrogatories with Marshal's ret. Served; Day & Zimmerman by Lynn B. Leding on 7-20-71 Revere Copper & Brass by Mr. Albert L. Molowa on 7-20-71 Harvey Aluminum, by R.J. Kelly on 7-21-71 Lear Siegler Co. by Mr. Cole on 7-28-71	
Dec.13-71	Filed deft. Lear Siegler, Interrogs. to plttf.	
Feb.23,73	Filed Deft. Day & Zimmerman, Inc.'s Notice of Motion re: Order pursuant to Rule 15(a) FRCP returnable Room 503, 5/3/73, 10:00 A.M., Affidvt of Bruce A. Hacker & proposed Answer annexed as Exhibit I.	
Apr. 4-73	Filed deft's interrogs to plttf.	
May 4-73	Filed plttfs' Opposing Affidavit, in opposition to deft. Day & Zimmerman's motion for an order permitting them to amend their answer.	
Jun.11-73	Filed stip & order that deft. Lear Siegler shall not be prejudiced, by its not making such a motion until after a decision is rendered on the motion of Day & Zimmerman. So ordered. Cannella, J.	

(Cont'd on Page 3)

JA3

71 Civ 3205

Dorman L. Baird, et al

vs. Day & Zimmerman, et al

CIVIL DOCKET 196-30

~~Duplicate - State, District of Columbia~~

JUDGE CANNELLA

RECORDED IN
ENCLUMENT
RETURNS

DATE	FILINGS—PROCEEDINGS
Jun. 15-73	Filed stip & order that time of deft. Harvey Aluminum to, answer plttf's interrogs is ext. to 7-19-73. So ordered. Cannella, J.
Jun. 26-73	Filed Memo-endorsed on deft's Day & Zimmermann 's motion filed, 2-23-73: Deft's motion for leave to amend its answer to, include a defense, having come on to be heard by Cannella, J. & referred to & report to Magistrate Goettel, report having, been made on 6-18-73. Ordered that said motion is denied in, its entriety. So ordered. Cannella, J. m/n
Jun. 26, 73	Filed report and recommendation by deft. Day & Zimmerman.
Jun. 26, 73	Filed memo of law in opposition to deit. Day and Zimmerman motion to amend answers.
Jun. 26, 73	Filed deit. Day and Zimmerman memo in support of motion to amend answer.
Jun. 26, 73	Filed supplemental memo of Day & Zimmermann in support of motion to amend answer.
Jun. 26-73	Filed plttf's memorandum of law in opposition to deit's motion, to amend its answers.
Jul 6-73	Filed stip and order that the time for the deit. Harvey Aluminum, Inc. to answer plttf Interrogatories to defts (second set) is hereby extended to include 8/19/73, So Ordered Cannella J.
Aug 21-73	Filed deit. Day & Zimmerman, Inc's answers to plttfs Interrogatories
Aug 21-73	Filed deit Martin Marietta Aluminum Inc's answers to plttfs Interrogatories.
Sep 5-73	Filed deit. Lear Siegler & Co's answer to plttfs interrogatories.
Sep 10-73	Filed Danswers of deit Revere Copper & Brass, Inc's to plttfs in-terrogatories .
Dec. 28-73	Filed plttfs' notice of taking deposition of deit. Day & Zimmerman, Inc. on 1-11-74.
Dec. 11-73	Pre-trial conference held before Goettel, US Mag.
Jan. 7-74	Filed order on pre-trial conference. CANNELLA, J.
Jan. 28-74	Filed deit. Martin Marietta Aluminum Inc. affdvts. of William M. Elliott, Richard E. Cuthrie and Charles T. Olson and Paul Sherman and notice of motion for an order dismissing complaint. Ret. 2-4-74.
Jan. 28-74	Filed memorandum of deit. Martin Marietta Aluminum in support of its motion to dismiss.
Febl-74	Filed Affidavit of Jesse Alan Epstein, in opposition to deit Martin Marietta Aluminum Inc's (M.J. ALUMINUM) motion to dismiss the complaint for lack of jurisdiction.
Febl-74	Filed plttfs memorandum of law in opposition to motion to dismiss the complaint.

71 Civ.3205

DATE	FILINGS—PROCEEDINGS	AMOUNT REPORTED IN EMOLUMENT RETURNS
Feb. 5-74	Filed reply memorandum in support of motion to dismiss.	
Feb. 15-74	Filed pliffs' notice of taking deposition of deft. Martin Marietta Aluminum Inc. (formerly known as Harvey Aluminum Inc) on 3-6-74.	
Feb. 15-74	Filed pliffs' notice of taking deposition of deft. Revere Copper & Brass on 3-5-74.	
Feb 25-74	Filed defts Martin Marietta Aluminum Inc. motio for a protective order.	
Feb 25-74	Filed memorandum in support of motion of deft. Martin Marietta Aluminum Inc. for a protective order.	
Feb 25-74	File do order that the court having been fully advised of all the aforesaid proceedings by Mag. Goettel by a memorandum dated 2-19-74, it is ordered that pliffs may examine deft Lear Siegler, Inc. before trial by taking the oral deposition of one more of its employees provided that (a) pliffs tender to deft Lear Siegler, Inc. in advance of any said deposition an amount of money sufficient to cover the witnesses reasonable travel etc. and pliffs post a bond by a bonding company authorized to execute undertakings in the State of New York with the Court in the amount of \$1,000 to cover the reasonable costs and expenses incurred by Lear Siegler, Inc. etc. as indicated, Cannella, J.	
Feb. 28-74	Filed pliffs' notice of taking deposition of Martin Marietta Aluminum Sales, Inc. (formerly known as Harvey Aluminum Sales Inc) On 3-13-74.	
Feb. 11-74	Pre-trial conference held- Goettel, U.S. Mag.	
March 4-74	Filed stip & order that deft. Martin Marietta Aluminum, Inc's motion for Protective Order dated 2-22-74, is withdrawn without prejudice. So ordered- CANNELLA, J.	
March 8-74	Filed stip & order extending deft. Martin Marietta Corp's deposition to 3-26-74 and extending said deft's time to respond to civil subpoena to 3-26-74. So ordered- CANNELLA, J.	
March 15-74	Filed pliffs' notice of taking deposition of the U.S.A. Dept. of the Army, Picatinny Arsenal, etc. on 3-28-74	
Apr. 9-74	Filed deft. Harvey Aluminum post-hearing memorandum in support of motion to dismiss.	
Apr. 11-74	Pltff's further memorandum of law in opposition to deft. Martin Marietta Aluminum's motion to dismiss.	
Apr. 15-74	Pre-trial conference held- Goettel, U.S. Mag.	
April 26-74	Filed deft. Revere Copper & Brass pre-trial memorandum.	
Apr. 29-74	Filed pre-trial memorandum of deft. Martin Marietta Aluminum.	
Apr. 29-74	Filed pre-trial memorandum of deft. Day & Zimmermann, Inc.	
May 10-74	Filed deft. Day & Zimmermann supplemental answer to interrogs. (second set)	

(PAGE # 5)

CANNELLA, J.

10 Rev. Civil Docket Continuation

DATE	PROCEEDINGS	D Ju
May 20-74	Pre-trial conference held- Goettel, U.S. Mag.	
June 7-74	Filed deft. Day & Zimmerman, Inc's additional supplemental answer to interrog.	
June 14-74	Filed transcript of record of proceedings, 3-26-74	
June 13-74	Filed memorandum- the motion of deft. Martin Marietta Aluminum, Inc. (formerly and named herein as Harvey Aluminum), to dismiss the complaint as against it for lack of personal and subject matter jurisdiction is granted and the complaint is dismissed as against said deft. So ordered- CANNELLA, J. (m/n)	
June 17-74	Filed report and recommendation of Magistrate Goettel	7
June 19-74	Filed unsigned pre-trial order	
June 19-74	Filed plttf's pre-trial memorandum	
June 19-74	Filed deft. Lear Siegler, Inc's pre-trial memorandum	
June 19-74	Filed deft. Day & Zimmermann, Inc's pre-trial memorandum	
June 19-74	Filed deft. Martin Marietta Aluminum pre-trial memorandum	
June 19-74	Filed rider to pre-trial order	
June 19-74	Filed Order- that plttf. file a proper statement of the issues of this case as they affect each deft., in the manner indicated in the report and recommendation of Magistrate Goettel, within thirty (30) days from the date hereof, or suffer the dismissal of the instant action as indicated- it further appearing from the aforesaid report and recommendation that all parties except the Plttf. are desirous of a bifurcated and separate trial on the issues of liability and damages in this matter as indicated- and that the trial of the above entitled action be and hereby is bifurcated and separated as to the issues of liability and damages and that the issue of liability be tried first and as indicated. CANNELLA, J. (m/n)	
July 1-74	Filed deft. Martin Marietta Aluminum Inc's affidavit of Paul Sherman and notice of motion for an order to dismiss as to said deft. Ret. 7-10-74	
July 1-74	Filed memorandum in support of motion of deft. Martin Marietta Aluminum for the entry of final judgment pursuant to Rule 54 (b)	
Jul 8-74	Filed plttfs Affidavit with respect to deft. Harvey Aluminum's application directing the entry of a Final Judgment dismissing the Complaint in this action etc. as indicated	
July 8-74	Filed transcript of record of proceedings, 3-26-74	
July 11-74	Filed memo endorsed on motion filed 7-1-74. The Court being of the view that there exists no just reason for delay and that judgment should be entered, the within motion for an order pursuant to FRCP 54 (b) is granted, plttf. consenting thereto. Submit order. CANNELLA, J. (M/n)	
Jul 30-74	Filed Order for entry of final judgment- Ordered that final judgment be entered dismissing the complaint as against Martin Marietta Aluminum, Inc. for lack of personal and subject matter jurisdiction. CANNELLA, J. Judgment entered- 7-30-74 Clerk (m/n)	
Aug. 5-74	Filed plttfs' amendment to pre-trial order.	
Aug. 13-74	Filed plttfs' notice of appeal from judgment entered 7-30-74, dismissing the complaint as against Martin Marietta Aluminum, Inc. (formerly called Harvey Aluminum Inc.) for lack of personal and subject matter jurisdiction. Copies mailed to: Dewey, Ballantine, Bushby, Palmer & Wood - Blank, Rome, Klaus & Comisky- Shea, Gould, Glimenko & Kramer- Walsh & Frisch and D'Amato, Costello & Shea. Ent. 8-14-74	
Aug. 26-74	Filed report and recommendation of Magistrate Goettel	
Aug. 26-74	Filed memo endorsed to plttf's amendment to pre-trial order filed 8-5-74. Ordered that plttf's action against Revco Copper & Brass, Inc. is dismissed for failure to comply with order dated 6-18-74- that plttf's amendment to pre-trial order be deemed further amended as specified in the report and recommendation of Magistrate Goettel dated 8-13-74 and that plttf. is precluded from offering any evidence of statutory violations by deft. Lear Siegler Co., Inc. as indicated. So ordered - CANNELLA, J. (m/n)	

NOTICE OF MOTION TO DISMISS COMPLAINT

JA6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

DORMAN L. BAIRD and DORIS J. BURNS, as :
Administratrix of the Goods, Chattels :
and Credits which were of WENDELL M. :
BURNS, deceased, and DORIS J. BURNS, :
individually, :

Plaintiffs, :

-against-

71 Civ. 3205 (JMC)

: NOTICE OF MOTION TO
: DISMISS COMPLAINT

DAY & ZIMMERMAN, INC., REVERE COPPER & :
BRASS, INC., HARVEY ALUMINUM (Incor- :
porated) and LEAR SIEGLER CO. INC., :

Defendants. :

----- x

SIRS:

PLEASE TAKE NOTICE that, upon the annexed Affidavits of William M. Elliott, Richard E. Guthrie and Charles T. Olson, all sworn to on January 18, 1974, and the Affidavit of Paul Sherman, Esq., sworn to on January 25, 1974, the undersigned will move this Court before the Honorable John M. Cannella, United States District Judge, in Room 1001, United States Courthouse, Foley Square, New York, New York, on the 4th day of February, 1974 at 10:00 o'clock in the forenoon of that day or as soon thereafter as counsel can be heard for an order, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, dismissing the Complaint herein on the grounds that (1) this Court lacks personal and subject matter jurisdiction over defendant Martin Marietta Al-

JA7

uminum Inc., formerly Harvey Aluminum (Incorporated); and (2)
venue is improperly laid in the Southern District of New York.

Dated: New York, New York
January 25, 1974

DEWEY, BALLANTINE, BUSHBY, PALMER & WOOD

HUGH N. FRYER

By _____

Hugh N. Fryer, Esq.
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New York, New York 10005
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116 John Street
New York, New York 10038

Shea, Gould, Climenko & Kramer
330 Madison Avenue
New York, New York

AFFIDAVIT OF WILLIAM M. ELLIOTT IN SUPPORT OF FOREGOING MOTION
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

DORMAN L. BAIRD and DORIS J. BURNS, as :
Administratrix of the Goods, Chattels and :
Credits which were of WENDELL M. BURNS, :
deceased, and DORIS J. BURNS, individually,

Plaintiffs, :

71 CIV 3205

-against-

: AFFIDAVIT IN SUPPORT
: OF MOTION TO DISMISS

DAY & ZIMMERMAN, INC., REVERE COPPER :
& BRASS, INC., HARVEY ALUMINUM (Incor- :
porated) and LEAR SIEGLER CO., INC., :

Defendants. :

-----X

William M. Elliott, being duly sworn, deposes and says:

1. I am the Secretary of Martin Marietta Aluminum Inc. ("MM Aluminum"). I had an investigation made of the books and records of the Company and among the employees of the Company familiar with the relevant facts of this case. The following facts are the results of that investigation and are true upon information and belief. I make this affidavit in support of the motion of MM Aluminum to dismiss the Complaint against it in the above-entitled case.

2. MM Aluminum was incorporated under the laws of the State of California on May 14, 1942. During 1971 and earlier, this corporation, which formerly did business under the name of Harvey Aluminum (Incorporated), maintained its principal place of business at Torrance, California. Throughout this affidavit MM Aluminum is utilized to refer to Martin Marietta Aluminum Inc. under both its present name and its former name, Harvey Aluminum (Incorporated).

3. The primary business of MM Aluminum consists of the production of aluminum and the manufacture of aluminum products. Facilities for production and manufacture are maintained in the states of California,

Kentucky, Michigan, Oregon and Washington. No facilities are maintained in the State of New York and MM Aluminum has never engaged in the manufacture, production or assembly of any goods in that State.

4. MM Aluminum has never been licensed to do business in the State of New York.

5. During its fiscal year ending December 31, 1971, MM Aluminum shipped approximately 5.5% of its entire output of aluminum and aluminum products into the State of New York. Orders for these shipments were obtained from customers in one of the following three ways: (1) Employees of Martin Marietta Aluminum Sales Inc. ("MM Sales"), a wholly-owned subsidiary of MM Aluminum, solicited such orders from customers located in New York City, northern New Jersey and western Connecticut and then forwarded these orders to the offices of MM Aluminum for acceptance, rejection, or other further action; (2) Customers located in New York sent orders for products directly to the production facilities described above or to other offices of MM Aluminum located outside the State of New York, where employees of MM Aluminum acted on these requests; and (3) Orders were sent directly to these same production facilities or offices outside New York by customers who were not situated in the State of New York, but who requested that the ordered products be shipped into that State.

6. MM Aluminum does not maintain records which would show which orders were solicited by employees of MM Sales from customers located in New York State, as distinguished from customers located in New Jersey or Connecticut. However, the MM Sales New York office accounted for only 1.5% of MM Aluminum's total sales in 1971, and it is probable that substantially less than 1.5% of total sales were shipped to New York State as a result of orders solicited by employees of MM Sales.

7. MM Aluminum utilized common carriers to transport all goods which it shipped into New York State. MM Aluminum did not possess any

JAIO

ownership interest or property interest of any kind in these common carriers. The delivery term for these goods was always "f.o.b. place of manufacture."

8. Certain employees of MM Aluminum were authorized to reject orders forwarded to MM Aluminum by employees of MM Sales. Such orders were in fact rejected by these employees for a variety of business reasons on numerous occasions during 1971 and earlier. MM Aluminum paid commissions to MM Sales only for those orders accepted by MM Aluminum.

9. Apart from the activities of its subsidiary, MM Sales, which are described above, MM Aluminum has not employed any sales agent, resident sales representative or other type of sales representative in the State of New York in the past twenty years. MM Aluminum has not owned, leased, used, possessed or operated any office, plant or facility of any kind in the State of New York since July, 1970, nor has it owned or leased any real property in that State since that time.

10. MM Aluminum has never permitted a listing of its corporate name or of a New York address or telephone number in the telephone directories of that State, has never had a New York mailing address and did not list a New York address on any stationery or other publication issued by it during 1971. In summary, neither MM Aluminum nor any of its employees has represented to the public that this corporation is doing or has done business in New York.

11. MM Aluminum has always advertised its products only through trade journals and national media, and has never advertised in purely local New York publications or media.

William M. Elliott

Subscribed to and sworn
before me this 18 th
day of January, 1974.

William M. Elliott
Notary Public

My Commission Expires Nov. 14, 1975

AFFIDAVIT OF RICHARD E. GUTHRIE IN SUPPORT OF FOREGOING MOTION
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JA11

-----X

DORMAN L. BAIRD and DORIS J. BURNS, as :
Administratrix of the Goods, Chattels and :
Credits which were of WENDELL M. BURNS, :
deceased, and DORIS J. BURNS, individually, :
:
Plaintiffs, 71 CIV 3205 :
:
-against- AFFIDAVIT IN SUPPORT :
:
DAY & ZIMMERMAN, INC., REVERE COPPER :
& BRASS, INC., HARVEY ALUMINUM (Incor- :
porated) and LEAR SIEGLER CO., INC., :
:
Defendants. :
:
-----X

Richard E. Guthrie, being duly sworn, deposes and says:

1. I am the Assistant Secretary of Martin Marietta Aluminum Sales Inc. ("MM Sales"). I had an investigation made of the books and records of the Company and among the employees of the Company familiar with the relevant facts of this case. The following facts are the results of that investigation and are true upon information and belief. I make this affidavit in support of the motion of Martin Marietta Aluminum Inc. ("MM Aluminum") to dismiss the Complaint against it in the above-entitled case.
2. MM Sales was incorporated under the laws of the State of California on May 29, 1939. During 1971 and earlier, this corporation, which formerly did business under the name Harvey Aluminum Sales, Inc., maintained its principal place of business at Torrance, California. Throughout this affidavit MM Sales is utilized to refer to Martin Marietta Aluminum Sales Inc., under both its present name and its former name Harvey Aluminum Sales, Inc.
3. MM Sales is a wholly-owned subsidiary of MM Aluminum and is licensed to do business in the State of New York.

4. During 1971 and earlier, MM Sales leased an office in the County of Queens, New York. In 1971, MM Sales employed a manager, four salesmen and a secretary to staff this office and these employees were paid by MM Sales.

5. During 1971 and earlier employees of this office solicited some orders for goods manufactured by MM Aluminum from customers located in New York City, northern New Jersey and Western Connecticut. However, neither MM Sales nor its employees had any authority to accept orders or to confirm sales on behalf of MM Aluminum. Employees of MM Aluminum rejected a number of orders forwarded by these MM Sales personnel in 1971 and earlier.

6. MM Sales no longer leases this office nor does it maintain any other office or business facility in the State of New York at the present time.

7. MM Aluminum paid commissions to MM Sales for any orders solicited by MM Sales and finally accepted by MM Aluminum. Less than 3% of the total nationwide income of MM Sales was derived from commissions received for solicitations of orders for MM Aluminum products in New York in 1971.

8. Aside from the business of soliciting orders for MM Aluminum's products, MM Sales engages in substantial independent manufacturing activities outside the State of New York and the income derived from these operations constituted 76.7% of its total book-basis income in 1971. No products manufactured by MM Sales are sold to New York customers.

9. MM Sales separately maintains its own corporate books and records. In all of its business activities, MM Sales has maintained and operated its own facilities and compensated its employees from its own corporate funds and bank accounts.

JA13

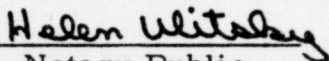
10. Apart from the activities and the functions of the sales office described above, MM Sales has not employed any agent, resident representative or other type of representative who resides in the State of New York during the past twenty years, nor has it had any dealers, jobbers or independent contractors located in the State of New York or representing it in that State in the solicitation of orders for the products of MM Aluminum during that time period. Similarly, apart from the sales office described above, and its predecessors, MM Sales has not owned, leased, possessed, used or operated any other office or business facility of any kind in the State of New York during the past twenty years, and MM Sales did not own or lease any other real property in that State during that time period.


Richard E. Guthrie

Subscribed to and sworn

before me this 21st

day of January, 1974.


Notary Public

My Commission Expires Nov. 14, 1973

AFFIDAVIT OF CHARLES T. OLSON IN SUPPORT OF FOREGOING MOTION JA14
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
DORMAN L. BAIRD and DORIS J. BURNS, as :
Administratrix of the Goods, Chattels and :
Credits which were of WENDELL M. BURNS, :
deceased, and DORIS J. BURNS, individually, :
:
Plaintiffs, 71 CIV 3205 :
:
-against- : AFFIDAVIT IN SUPPORT
:
DAY & ZIMMERMAN, INC., REVERE COPPER : OF MOTION TO DISMISS
& BRASS, INC., HARVEY ALUMINUM (Incor- :
porated) and LEAR SIEGLER CO., INC., :
:
Defendants. :
:
-----X

Charles T. Olson, being duly sworn, deposes and says:

1. From December 6, 1971 to April 1, 1972, I managed an office maintained by Martin Marietta Aluminum Sales Inc. ("MM Sales") in Forest Hills, New York, and engaged in the solicitation of orders for products manufactured by Martin Marietta Aluminum Inc. ("MM Aluminum"). I make this affidavit in support of the motion of MM Aluminum to dismiss the Complaint against it in the above-entitled case.

2. During this period, the office was staffed by me, four salesmen who were responsible for soliciting orders from customers located in the five counties of New York City, northern New Jersey and western Connecticut, and a secretary. None of the personnel of this office had the authority to enter into binding contracts on behalf of either MM Sales or MM Aluminum.

3. Neither I nor, on information and belief, any of the salesmen represented to customers or to the public at large that I or they possessed the authority to make contracts which would bind either corporation. None of the salesmen was authorized to make any such representation.

JA15

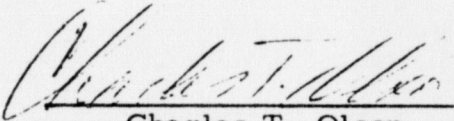
4. None of the personnel of the office was vested with authority to accept or confirm any of the orders which were solicited. Instead, all solicited orders were forwarded to MM Aluminum for acceptance or rejection.

5. During the period that I served as Manager of the New York office of MM Sales, MM Aluminum rejected or refused a number of orders forwarded for approval on several grounds.

6. At all times all personnel of the office, including myself, were compensated for services by MM Sales.

7. In order to aid the staff of this office in their efforts to solicit sales, a listing of the office telephone number was maintained in the telephone directories of the City of New York in the name of MM Sales. No listing under the name of MM Aluminum was made. In addition, stationery and brochures, which referred only to the name of MM Sales and its office address, were issued to the staff.

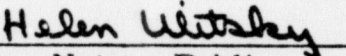
8. Apart from this listing of MM Sales in telephone directories and distribution of these brochures, the staff of this office was not authorized to, and did not, engage in any other form of advertising on behalf of either corporation in the State of New York or elsewhere.


Charles T. Olson

Subscribed to and sworn

before me this 18th

day of January, 1974.


Notary Public

AFFIDAVIT OF PAUL SHERMAN IN SUPPORT OF FOREGOING MOTION

JA16

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

DORMAN L. BAIRD and DORIS J. BURNS, as :
Administratrix of the Goods, Chattels :
and Credits which were of WENDELL M. :
BURNS, deceased, and DORIS J. BURNS, :
individually, :

Plaintiffs, :

-against-

DAY & ZIMMERMAN, INC., REVERE COPPER & :
BRASS, INC., HARVEY ALUMINUM (Incor- :
porated) and LEAR SIEGLER CO., INC., :

Defendants. :

- - - - - x

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

PAUL SHERMAN, being duly sworn, deposes and says:

1. I am an attorney-at-law admitted to practice in the State of New York and before this Court. I am associated with the firm of Dewey, Ballantine, Bushby, Palmer & Wood, attorneys for Martin Marietta Aluminum, Inc. ("MM Aluminum"), formerly Harvey Aluminum (Incorporated), a defendant in the above-entitled action. I am familiar with all the prior proceedings herein and make this Affidavit in support of the motion of MM Aluminum to dismiss the Complaint against it in this action.

2. This action was commenced by the filing of a Complaint on July 15, 1971. Plaintiffs attempted personal service of a Summons and Complaint upon defendant MM Aluminum on July 21, 1971 at Torrance, California.

3. The Complaint alleges that plaintiff Burns' decedent died and plaintiff Baird was seriously injured as the

JA17

result of the explosion of a 105 mm. howitzer cannon near Chulai, Republic of Viet Nam on September 6, 1969. This action is purportedly based upon claims of negligence and breach of warranty relating to the design, manufacture and distribution of the cannon and its components.

4. The Complaint further alleges that plaintiff Baird is a citizen of the State of Alabama and that plaintiff Burns is a citizen of the State of Washington.

5. The Answer of defendant MM Aluminum denies the basic allegations of the Complaint and sets forth several affirmative defenses. Among the affirmative defenses raised in that Answer are lack of jurisdiction and venue. Specifically, the Answer denies plaintiffs' allegation that MM Aluminum is "incorporated under the laws of the State of New York, and/or authorized to do business in the State of New York, and/or has a principal place of business in the State of New York and/or is doing business in the State of New York."

6. As the annexed Affidavits demonstrate, MM Aluminum has no contact with the State of New York sufficient to give rise to personal jurisdiction, since it is incorporated under the laws of the State of California, is not and was not licensed to do business in New York, and maintained its principal place of business at Torrance, California during 1971 and earlier. Furthermore, as the annexed Affidavits show, MM Aluminum has not owned, leased, used, possessed or operated an office, manufacturing plant or facility of any kind in this State at any time pertinent to this action.

7. To the contrary, the annexed Affidavits show that MM Aluminum's sole contact with New York is the shipment of its manufactured products into this State, involving no more than approximately 5.5% of MM Aluminum's entire output. The vast bulk of these shipments resulted from (1) direct orders from New York-based customers, and (2) direct orders from non-New York customers who requested shipment into this State.


8. These Affidavits further show: (A) that less than 1.5% of MM Aluminum's 1971 sales were generated by the New York activities of MM Aluminum Sales Inc. (formerly Harvey Aluminum Sales, Inc. and hereinafter referred to as "MM Sales"), a wholly-owned subsidiary of MM Aluminum which is licensed to do business in New York; (B) that these New York activities consisted solely of the solicitation of orders for goods manufactured by the parent corporation outside New York; (C) that no employee of MM Sales possessed the authority to accept such orders or to confirm sales on behalf of the parent corporation; and (D) that MM Aluminum rejected a number of orders forwarded by MM Sales for various business reasons during 1971 and earlier.

9. Finally, the annexed Affidavits show: (A) that MM Sales was not a mere New York sales agent of MM Aluminum since MM Sales derived less than 3% of its 1971 revenues from its New York solicitations on behalf of MM Aluminum and also operated substantial production facilities located outside New York which accounted for more than 75% of its revenues; (B) that MM Sales pays its own employees and maintains its own facilities and records; (C) that neither MM Sales nor MM Aluminum advertised or maintained an office address or telephone number for MM Aluminum in

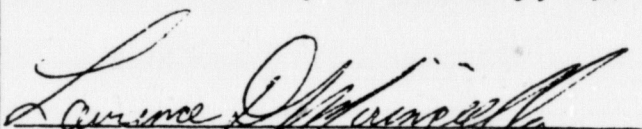
JA19

New York; and (D) that MM Aluminum did not own or lease any real property in New York at any time relevant to this action.

WHEREFORE, the motion to dismiss on behalf of Martin Marietta Aluminum Inc. should be granted and this Court should award such other and further relief as may be appropriate.


Paul Sherman

Sworn to and subscribed before
me this 25th day of January, 1974


Notary Public

LAWRENCE D. MORINGIELLO
NOTARY PUBLIC, State of New York
No. 24-4512824
Qualified in Kings County
Certificate filed in New York County
Commission Expires March 30, 1975

JA20

AFFIDAVIT OF JESSE ALAN EPSTEIN IN OPPOSITION TO FOREGOING MOTION
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

DORMAN L. BAIRD and DORIS J. BURNS, as
Administratrix of the Goods, Chattels
and Credits which were of WENDELL M.
BURNS, deceased, and DORIS J. BURNS,
individually,

Plaintiffs,

-against-

71 Civ.3205 (JMC)

OPPOSING
AFFIDAVIT

DAY & ZIMMERMAN, INC., REVERE COPPER &
BRASS, INC., HARVEY ALUMINUM (Incorpor-
ated) and LEAR SIEGLER CO., INC.,

Defendants.

-----X

STATE OF NEW YORK)

SS:

COUNTY OF NEW YORK)

JESSE ALAN EPSTEIN, being duly sworn deposes
and says:

I am associated with the firm of JULIEN, BLITZ
& SCHLESINGER, P.C., attorneys for plaintiffs and am submitting
this affidavit in opposition to defendant Martin Marietta
Aluminum Inc.'s (M.M. Aluminum) motion to dismiss the complaint
for lack of jurisdiction and improper venue.

This case involves the explosion of a 105 mm
Howitzer artillery gun in Vietnam. Plaintiff Baird was seriously
injured. Plaintiff Burns' decedent was killed. Upon information

JA21

and belief the defendants manufactured and assembled the 105 mm M-1 cartridge and its components used in the gun.

M.M. Aluminum was formerly Harvey Aluminum Inc. and was sued under that name.

M.M. Aluminum is doing enough business within the State of New York to subject it to jurisdiction. Service of process was effectuated on M.M. Aluminum on July 21, 1971. The following facts from defendant's moving papers show that defendant was doing business in New York in 1971. M.M. Aluminum had a wholly owned subsidiary called Martin Marietta Aluminum Sales Inc. (M.M. Sales) which leased an office in Queens County, New York City during 1971 and earlier. In 1971 M.M. Sales employed a manager, four salesmen and a secretary to staff this office. (Guthrie affidavit, paragraph 4)

M.M. Sales solicited orders for goods manufactured by M.M. Aluminum for customers located within the State of New York. (Guthrie affidavit, paragraph 5) M.M. Sales had a listing in the New York City telephone directories. (Olson affidavit paragraph 7). M.M. Sales was licensed to do business in the State of New York. (Guthrie affidavit, paragraph 3.)

Defendant admits that M.M. Aluminum shipped approximately 5.5% of its entire output of aluminum and aluminum products into the State of New York. (Elliott affidavit, par.5)

JA22

There are other facts which support the conclusion that M.M. Aluminum was doing business in New York. In 1970 under the name of Harvey Aluminum, M.M. Aluminum had an ad in the Manhattan Yellow Pages for its products. (See Exhibit "1" attached). M.M. Aluminum is a subsidiary of the Martin Marietta Corporation which has its executive offices at 277 Park Avenue, in Manhattan. (See report on Martin Marietta published by Standard and Poor in the Standard and Poor 1972 Stock Market Encyclopedia, attached as Exhibit "2"). M.M. Aluminum sales figures can be estimated from the Standard and Poor report on Martin Marietta as ^{about} \$300,000,000. a year. (This estimate was arrived at by comparing the net sales of Martin Marietta in 1968 with the net sales in 1969, the first year M.M. Aluminum sales were included in the Martin Marietta sales figures.) Thus, the 5.5% which M.M. Aluminum ships into New York can amount to about \$15,000,000. a year in sales.

Finally, M.M. Sales, admittedly operating within New York has a direct connection with this case. M.M. Sales operated the Milan Army Ammunition Plant where fuses and fuse components used in the 105 mm M-1 cartridge were assembled.

(See M.M. Aluminum answers to plaintiffs' second set of interrogatories, number 5, attached as Exhibit "3").

Thus, M.M. Aluminum had sufficient contact with New York to enable the Court to obtain jurisdiction over it. It advertised in the Manhattan phone book, its wholly owned subsidiary was licensed to do business in New York and maintained an office in New York City with several employees for the purpose of soliciting business of New York customers. A substantial dollar amount of sales were shipped into New York. M.M. Aluminum's parent corporation, Martin Marietta, had its executive offices in New York. Finally, M.M. Sales had a direct connection with this case as the assembler of one of the components alleged to have caused the injuries to the plaintiffs.

As shown by our attached memorandum of law, New York has enough connection with M.M. Aluminum to obtain jurisdiction over it. Since M.M. Aluminum is doing business in New York, venue has been properly laid in the Southern District.

It is important to note that New York may be the only place where jurisdiction can be obtained over all of the defendants in this case. The occurrence took place in Vietnam. Plaintiff Baird resides in Alabama and plaintiff Burns resides in the state of Washington. The only alternative to bringing the case in New York would have been splitting the case up into two

JA24

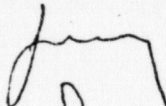
or more cases. Such a division would amount to a great waste of judicial time and might lead to inconsistent results.

WHEREFORE, it is respectfully requested that defendant's motion be denied.



JESSE ALAN EPSTEIN

Sworn to before me this

31 day of , 1974.



Notary Public

DAVID JAROSLAWICZ
Notary Public, State of New York
No. 31-7075140
Qualified in New York County
Term Expires March 30, 1974

ONLY COPY AVAILABLE

EXHIBITS ANNEXED TO AFFIDAVIT OF JESSE ALAN EPSTEIN

City's Area Code is 212

50955 © New York Telephone Company 1970

ONLY COPY AVAILABLE

MAN

OSLER
ALUMINUM

AMERICAN JEREX CO
330 Day Ave. Amityville, LI 516 264-0600
(SEE ADVERTISEMENT THIS PAGE)
AMERICAN MODERN METALS CO
Producers Of: Aluminum Tubing
• Rod-Bar • Special Shapes •
• Rounds, Squares, Hexagons
• All Tempers & Alloys • Coil Tubing
• Engineering & Fabricating Facilities
• Extruded Shapes
N.Y. Office: 201 991-2100
Passaic Ave. & Belgrade Dr.
Kearny, NJ NYC# W0 4-2492

AMES METAL MOULDING CO INC
ALUMINUM EXTRUSIONS
350 N. Midland Ave.
Saddle Brook, NJ - NYC# WE 5-0913

Amacoma Aluminum Co
Park 80 Plaza East, Saddle Brook, NJ - 201 845-8055
Atlantic Aluminum & Metal Distributors Inc
120 Liberty St.
RE 2-4998

ATLAS SUPPLY CO INC
Duct, Utility and Specification Sheets
2960 West 10th St.
584-1650
Aubrey & Co Inc 99 Wall St.
269-2640
BADGER ALUMINUM EXTRUSION CORP
450 George Ave. Bklyn - 649-6400
(SEE ADVERTISEMENT THIS PAGE)

Bales Metals
Importers All Aluminum Mill Products
57 Wall St.
342-2425
BELMONT SMELTING & REFINING WKS INC
Unit Office & Plant
Bklyn 330 Belmont Ave.
342-4900
Sales Engineering Center
Nassau 200 Expressway So. Bklyn LI 516 HT 4-1200
N.Y.C. 201 MA 4-4904

Berry Steel Corp The
Woodbridge Ave. Edison, NJ - NYC# 349-0636
BTELER INTERNATIONAL CORP
435 1st Ave. Hauppauge, LI - 516 231-7500

BOND METAL SURPLUS CO
ALUMINUM & STAINLESS STEEL DISTR.
Sheets - Tubing - Bars
Cutting & Shearing Facilities
321 Canal St. Bklyn - CA 6-2928

BONNELL WM L CO INC THE
350 5th Ave.
LO 5-1360
(SEE ADVERTISEMENT THIS PAGE)
Brown J Co 537 W 35th St.
BR 9-8528
Bridgeport Brass Co 1740 Broadway
586-0770
Browning Metals Corp 295 Madison Ave.
532-7900

CONKLIN T E BRASS & COPPER
• ALL MILL PRODUCTS
• SPECIALTY ITEMS
• SLITTING - SHEARING - SAWING
• IMMEDIATE DELIVERY
CONKLIN

"FOR SERVICE CALL"
CONKLIN T E BRASS & COPPER CO INC
Warehouse: 270 Nevins St. Brooklyn
324 W 23rd St.
691-5100

CONSOLIDATED ALUMINUM CORP
480 Kaler St.
561-2240
Cupples Prods. Corp.
Tomlinson Rd. Ne. Brunswick, NJ - NYC# 227-8692
DAVIDSON ALUMINUM & METAL CORP
100 W. Industry Ct.
Deer Park, LI NYC# 212 849-3600
Eastern Metals Corp.
2177 Roosevelt Ave. Carteret, NJ - NYC# 227-2303
Eastern Rolling Mills Inc.
1176 E 180th St.
823-2000
EMPIRE ALUMINUM CORP
1450 Jersey City, NJ - NYC# CO 7-2100
Fabric Metals Corp.
High Purity - Embossed - Colored Coils
205 E 42nd St.
MU 3-8855

AMERICAN/JEREX CO.
DIV. OF CHATHAM CORP.
ALUMINUM
EXTRUSIONS

IN DAYS
NOT WEEKS

Aluminum (Cont'd)
FROMSON
FROMSON CO INC
Anodized Coil & Sheet - Also Lurium
Super Purity Alloys 261 Madison Ave. NY 7-0920

FURILLA METALS CORP
Aluminum - Stainless Steel
Specialty Alloys - Nationwide
71-29 170th Flus - PE 9-1208
Hamden Steel & Aluminum Corp
30 Edmund Hamden Corn - 203 777-5517

HARVEY ALUMINUM
INGOT, BILLET, SHEET, PLATE, FOIL, FORGINGS, IMPACT, EXTRUSIONS, ROD, BAR, TUBE, PIPE, STRUCTURALS, RATED ITEMS IN TITANIUM, ZIRCONIUM AND SPECIALTY STEELS.
HARVEY ALUMINUM

"FOR INFORMATION CALL"
HARVEY ALUMINUM SALES INC
131 Jericho Pk. Jericho, LI - 516 333-6010
DISTRIBUTOR
GENL AEROSPACE MATERIALS CORP
950 Fifer St. Plainfield, LI - 516 NY 4-5700

HARVEY & CO
Rods, Sheets, Tubing Angles Extrusions
15 Vandover Ave. Extn - 624-0111

HOWARD A B & CO INC
Mill Representative
ALUMINUM
Sheets, Strips, Coils & Circles
261 Madison Ave. - QX 7-7532

KAISER ALUMINUM
Ingot, Billet, Can Stock, Extrusions, Forged Products, Flat, Coiled Sheet, Plate, Rod, Bar, Wire, Screw Machine Stock, Electric Conductor, Conduit, Light Standard, Architectural, Roofing, Siding, Shale Screens, Culvert, Felt, Containers, Printed Packages
KAISER ALUMINUM

"FOR INFORMATION CALL"
KAISER ALUMINUM & CHEMICAL SALES INC
Birmingham Ave. Cranford, NJ - 201 272-4900
SERVICE CENTERS WAREHOUSE
NATIONAL STEEL SVCE CENTER INC
Pace Ave. & 10th St. Lyndhurst, NJ
Ask Carrier For Enterprise - 6400
(No Charge For Enterprise Calls)

Kaiser Aluminum & Chemical Corp
500 Rhode Island Ave. - NYC# 226-2874
Kruger Steel Company
325 W. 10th St. Philadelphia, Pa. NYC# MU 3-5290

LA GRANGE STEEL & ALUMINUM CORP
Industry Pouches, etc. - 914 454-7220

LEWISOHN ALUMINUM & STEEL PRODUCTS
DISTRIBUTORS - FABRICATORS
ALCOA ALUMINUM TRUCK BODY PARTS FORMED SECTIONS
SHEETS - FLOOR PLATES - EXTRUSIONS - HARDWARE - RIVETS - STRUCTURALS - BEAMS TRUCK PANELS - DOORS - CARGO SECUR. EQUIP. - SHEARING & BENDING TO 16 FT.

"WHERE TO BUY THEM"
LEWISOHN SALES CO INC
4001 Delia Ave. North Bergen, NJ - NYC# LO 3-2355

LUPTON MFG CO
51 E 42nd St. - 986-6020
LUST HENRY B INC
Circles, Sheets, Coils
119 W 57th St. - CI 6-0790
Lust Henry B Inc 119 W 57th St. - CI 6-0790
MANHATTAN ALUMINUM CORP
Circles, Sheets, Coils & Rods
56-71 44th St. - 381-5500

Exhibit "1"

Listings of This Classification

Aluminum (Cont'd)
Metal Textures & Coatings Co
12-2345 Blvd LI City - PE 6-4474
METALEDGE MOULDING CORP
EXTRUSIONS
BAR - CHANNEL - TUBING
ANGLES - THRESHOLDS - ROD
1455 Skillman Ave. Bklyn - 389-1000

MIDEAST ALUMINUM INDUSTRIES CORP
100 West 130th St. Bklyn - 201 297-1111
Morrison Steel Co
475 Jersey Ave.
New Brunswick, NJ - NYC# DI 9-3082
NY Brass & Copper Co Inc 257 Park Ave S - 477-5400
NON-FERROUS INTERNAL CORP
Coil Circles, Sheets, Rods, Non-Ferrous Mill Products Stainless Steel
271 Madison Ave. - 532-3284

OLIN ALUMINUM
Pure and Alloyed Ingot, Extrusion Ingot, Coil Sheet (Bare or Painted), Flat Sheet, Plate, Circles, Blanks, Extruded Shapes (Architectural, Structural), Pipe, Tube, Rod, Bar, Wire, Electrical Conductor (Bare and Covered), Forging Stock, Tread Plate
Olin ALUMINUM

"FOR INFORMATION CALL"
SALES OFFICE

OLIN CORP
Aluminum Division
42-78 Main Flus - 572-2664

ROD, BAR & WIRE SALES OFFICE

OLIN MATHIESON CHEMICAL CORP
460 Park Ave. - 572-2000

DISTRIBUTOR - ALUMINUM INGOT

HENNING BROS & SMITH INC
91 Scott Ave. Bklyn - HY 7-3470

Orbit Chemicals Corp
90 Verona Bklyn - 855-5191
Oremet Chemical Corp
4565 Sylvan Ave.
Englewood Cliffs, NJ - NYC# 565-5118

PECHINEY ENTERPRISES INC
825 3rd Ave. - 758-2700
Production Metals Inc
299 Pavonia Ave. Jersey City, NJ - NYC# W0 4-7900

REYNOLDS ALUMINUM
Ingot, Sheet, Plate, Rod, Bar, Wire, Shapes, Tube, Pipe, Electrical Conductor, Pre-Painted Sheet, Foil, Cans, Packaging, Chemicals, Powders, Pastes, Building Products, Fabricated Parts.
REYNOLDS

"FOR INFORMATION CALL"
SALES OFFICE

REYNOLDS METALS CO
19 E 47th St. - EL 5-7700

DISTRIBUTORS - MILL PRODUCTS

CONKLIN T E BRASS & COPPER CO INC
324 W 23rd St. - 691-5100

HUSSEY METALS DIV COPPER RANGE
CO 34-39 31st St. - 726-1000

RYERSON JOS T & SON INC
203 Westside Ave.
Jersey City, NJ - NYC# W0 4-1313

ROYCE ALUMINUM CORP

Custom Extrusions Fabricating - Anodizing Painting

Plant: 704 W. Water Taunton, Mass 617 824-8631
Sls Ofc: 2055 Center Ave. Fort Lee, NJ - 201 461-6240

RYERSON JOS T & SON INC
203 Westside Ave. Jersey City, NJ - NYC# W0 4-1313
SARAFAR ALUMINUM CO
Custom Extrusions - Anodizing - Fabricating - Painting
265 Sunnyside Hwy. Rte 1, Ctr. LI - 516 678-6330
Schon Industrial Services Inc 170 E 56th - 758-0520
Schwartz S Bernard Inc 140 Cedar - 267-5419
Schwartz & Cohn Inc 680 Fishing Ave. Bklyn - 388-1941

Aluminum (Cont'd)
SCOVILL TRUSPEC ALUMINUM SHEET & ROD
BRANCH OFFICE
SCOVILL MFG CO MILL PR.
Englewood Cliffs, NJ
(No charge for Enterprise)
44 Hudson St.
Englewood Cliffs

Simon & Mills Inc
25 Lenox Ave. - 800 3rd Ave. Bklyn - (SEE ADVERTISEMENT)

STRAHS ALUMINUM CO INC
800 3rd Ave. Bklyn - (SEE ADVERTISEMENT)

TRIMEDGE
BONNELL WM L CO INC 1
350 5th Ave.

TUBE DISTRIBUTORS STAINLESS
TUBES
TUBE DISTRIBUTORS CO INC
Stainless Alloy & Aluminum Products - and Extrusions
Appropriate Government
Kelum Pl. Garden City, LI

United Smelting & Aluminum Co Inc
North Haven Conn. Ask Carrier For
(No charge for Enterprise)

US STEEL SUPPLY
US STEEL SUPPLY DIV OF US
3000 Hwy 1, Newark, NJ

UNIVERSAL ALUMINUM EXTRUSION
Woburn, MA - 617 326-1111

VOSLER ALUMINUM CORP
28-21 122nd St. - 350 5th Ave.

WARNER MFG CORP
CUSTOM EXTRUSION
FABRICATING AND
CUSTOM DESIGN SER

WHITEHEAD METALS INC
Metal Goods Div of Alcan Alu
Warehouse Service
Milford, Conn. - 203 878-1111

Wolverine-Pentronix Inc
Siding, Soffits, Sheet, Coil, Sh
600 1st Ave. Bklyn - 691-5100

WRIGHT SALES CO INC

Painted Aluminum
.020 - .024 - .032 - .040
Anodized Sheets - Clear
DURANODIC SHEET
EXTRUDED SHAP
STOCK & CUSTOM S
SO 8-2600
166 25th St. Bklyn

► **Aluminum Anodizing**
See "Anodizing"

► **Aluminum Barrels & Drums**
See "Barrels & Drums"

► **Aluminum Building Entrances**
See "Store Fronts"

► **Aluminum Cooking Utensils**
See "Cooking Utensils"

In the bedroom — for convenience and so there's nothing like a telephone, in course.

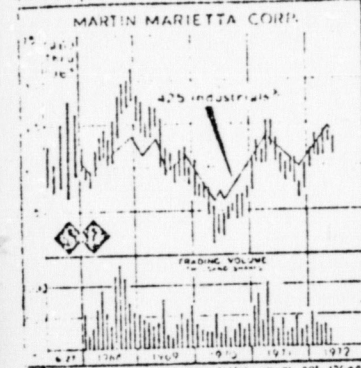
WILL THEY FIND

Martin Marietta Corp.

Stock—
COMMON

Price Jun. 21/72 Dividend Yield
20's \$1.10 5.3%

RECOMMENDATION: The company is well diversified in the areas of launch vehicles, missiles, cement, chemicals and aggregates, and owns 82.7% of Martin Marietta Aluminum. While Government and aerospace sales still contribute about half of billings, commercial activities provide over 65% of profits. Earnings for 1971 showed a worthwhile increase from those of 1970, reflecting strong gains in cement and aerospace operations. Progress in aluminum and cement activities should lead to at least moderate further gains in 1972, and the low multiple shares have speculative appeal.



SALES (Million \$)

Quarter:	1972	1971	1970	1969	1968
1st	223.1	202.6	210.0	197.0	154.3
2nd	248.2	257.1	229.5	176.2	176.2
3rd	235.7	236.0	275.8	168.7	168.7
4th	272.3	228.8	279.1	182.8	182.8

Sales for 1971 were up 1.9% from those of the preceding year. A substantial rise in cement shipments (owing to increased building activity) and higher space billings (reflecting growing market penetration) more than offset the absence of the divested printing operations. Benefits from a sharp rise in cement prices, absence of losses on discontinued lines, and lower interest charges extended the gain in pretax income to 15.0%. After taxes at 39.8% against 37.8%, and after minority interest, net income was up 14%. Results for 1971 exclude special profits of \$0.41 a share.

First quarter 1972 sales rose 10.1%, year to year. Pretax income was up 4.3%. After temporarily low taxes at 32.6% against 39.8%, and minority interest, net income advanced 15%.

COMMON SHARE EARNINGS (\$)

Quarter:	1972	1971	1970	1969	1968
1st	0.25	0.22	0.18	0.26	0.21
2nd	0.59	0.51	0.57	0.56	0.56
3rd	0.67	0.61	0.75	0.63	0.63
4th	0.53	0.45	0.51	0.66	0.66

ML is also listed Midwest, Pacific Coast & Phila. Bk. Wash. S.E. & traded Boston, Cincinnati & Detroit S.E. & Philadelphia. Incl. Harvey Aluminum off. 1968. *Primary costs (based on avg. sh.)

STANDARD N.Y.S.E. STOCK REPORTS

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Sec. 15

PROSPECTS

Near Term—Sales for 1972 should rise at least 10% from the \$958.8 million of the prior year. The largest gains may come from aerospace as funding picks up for such projects as Sprint, Skylab, Viking and the DC-10 Airbus. Moderate gains are also expected from chemicals and aggregates, reflecting the continued rise in construction activity.

Margins are expected to widen on the higher volume, production efficiencies at the Aluminum subsidiary and increased prices for cement. Thus, despite an expected rise in interest costs and a full year reduction in investment tax credits, earnings for 1972 should advance at least 12% from the \$2.01 a share (excluding \$0.41 special gains) of 1971. The \$0.27 quarterly dividend is the minimum expectation.

Long Term—The company should remain a major aerospace contractor, but commercial earnings probably will continue to supply the bulk of total profits.

RECENT DEVELOPMENTS

On May 31, 1972 ML received a \$168,400,000 Army contract for the Sprint anti-ballistic missile. The award was in accord with the terms of the recent U.S.-Soviet Arms Limitation agreement.

ML sold its Madison Silos subsidiary, a builder of agricultural silos, to Chromalloy American in May for \$7,000,000 in cash and notes. Madison has sales of about \$15 million.

DIVIDEND DATA

Under terms of financing agreements, \$134,066,000 was unrestricted at December 31, 1971. Payments in the past 12 months were:

Am't of Divd \$	Date Decl.	Ex divd. Date	Stock of Record	Payment Date
0.27%	Jul. 22	Aug. 31	Sep. 7	Sep. 30/71
0.27%	Nov. 18	Nov. 22	Nov. 29	Dec. 30/71
0.27%	Feb. 24	Feb. 29	Mar. 6	Mar. 31/72
0.27%	May 25	May 30	Jun. 5	Jun. 30/72

STANDARD & POOR'S CORP.

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MARTIN MARIETTA CORPORATION

INCOME STATISTICS (Million \$) AND PER SHARE (\$) DATA

Year Ended Dec. 31	Net Sales	% Oper. Inc. of Sales	Oper. Inc.	Deprec. & Amort.	Int. Inc.	Net Income	Earnings Per Share	Dividend	Price Range
1972--	---	---	---	---	---	---	---	0.55	24%-19%
1971--	958.8	13.7	131.1	46.36	79.13	47.01	2.01	1.10	25%-16%
1970--	940.9	12.9	121.1	43.58	68.40	40.91	1.75	1.10	20%-11%
1969--	901.4	13.8	135.5	40.41	97.53	44.18	2.21	1.10	20%-18
1968--	887.0	13.7	93.3	30.48	66.33	40.23	2.00	1.02	31%-12%
1967--	865.6	11.7	81.4	28.86	55.61	31.61	1.64	1.00	26%-19%
1966--	864.2	13.4	89.3	27.00	64.37	36.97	1.92	1.44	27%-16%
1965--	803.1	14.5	87.6	27.79	58.01	30.51	1.49	2.95	25-12%
1964--	767.1	11.0	90.4	20.99	56.03	30.35	1.35	2.70	20%-17%
1963--	966.6	10.0	97.0	31.06	70.14	34.64	1.54	2.99	22%-18
1962--	1,193.3	10.3	127.7	34.15	88.13	43.13	1.93	3.52	26%-17

PERTINENT BALANCE SHEET STATISTICS (Million \$)

Dec. 31	Gross Prop.	Capital Expend.	Cash Items	Inventory	Receivables	Current Assets	Liabilities	Net Worth	Cur. Ratio	Long Term Debt	Book Value
1971--	948.64	124.10	79.99	137.14	112.18	345.1	168.4	176.7	2.0-1	297.80	17.26
1970--	890.15	82.43	47.38	132.42	104.82	308.1	145.4	162.7	2.1-1	260.60	15.96
1969--	812.23	77.03	44.50	157.96	107.57	313.9	134.4	179.5	2.3-1	285.59	15.24
1968--	535.61	53.64	39.43	109.29	69.29	220.5	83.9	136.6	2.6-1	201.70	17.13
1967--	503.96	47.33	31.72	82.49	66.74	232.7	73.1	159.6	3.2-1	131.02	16.09
1966--	476.89	56.40	48.35	92.07	61.44	207.5	119.7	87.8	1.7-1	64.19	15.23
1965--	427.22	32.90	74.64	66.14	56.07	198.6	85.7	112.9	2.3-1	67.50	14.36
1964--	404.48	29.10	128.63	53.23	57.08	240.6	93.5	147.1	2.6-1	51.13	14.84
1963--	411.43	30.80	125.16	70.08	88.83	285.7	115.0	170.8	2.5-1	55.38	14.49
1962--	454.73	37.08	133.38	106.90	110.45	285.5	130.4	155.0	2.2-1	67.91	14.13

*Earnings based on avg. sh. outstg. at: 1964, incl. \$0.12 investment gain in 1969, net spec. cr. of \$0.41 a sh. in 1971, \$0.26 in 1967, \$0.21 in 1963 & \$0.10 in 1962. Incl. company's shares of Bunker-Ramo Corp. results aft. 1963. Incl. Harvey Aluminum aft. 1968. *Primary earnings (based on avg. sh.), fully diluted sh. earnings were \$1.91 in 1971, \$1.67 in 1970, \$2.10 in 1969 & \$2.03 in 1968.

*As computed by Standard & Poor's.

Fundamental Position
Martin Marietta is an important aerospace contractor and a major factor in the construction materials and aluminum industries.

In 1971 the Aerospace Group contributed 49% of sales and 34% of earnings before taxes and interest charges. The lesser rate of earnings contribution reflects the generally low margins on Government contracts.

Missile contracts include the Pershing, SAM-D, and Sprint (Safeguard System). Space activities include several configurations of the Titan III booster (a transstage launch vehicle) and the Skylab (space station). The division also produces communication systems, does aircraft subcontract work, and is engaged in varied research projects. ML will supply the spacecraft for the Project Viking soft-landing on Mars.

The remaining product groups contributed 51% of sales and 66% of earnings before taxes and interest in 1971. Aluminum contributed 21% of billings and 0% of income, Cement 13% and 15%, Chemical and Lime 8% and 16%, Aggregates 9% and 12%, and Investments 14% of income.

The Cement division is reportedly the fifth largest cement producer in the U.S.; margins have been consistently higher than average.

The Chemical and Lime division makes chemical dyes and additives and is the third largest lime producer in the U.S. (primarily for the steel industry).

Highway construction is the largest consumer of the Aggregate division's output.

Martin Marietta Aluminum (formerly

Harvey Aluminum) is 82.7% owned. It is a medium-sized integrated aluminum producer. In 1971 an extremely large aluminum reduction plant was completed which more than doubled capacity to 200,000 tons annually. Further expansion is now going on in several foreign ventures.

At 1971 year-end the carrying value of ML's 19% interest in Bunker-Ramo on the balance sheet was \$22.6 million, representing ML's cost less losses incurred. Bunker-Ramo's major activity is in electronics.

Paid since 1961, dividends averaged 55% of available earnings in the five years through 1971.

Employees: 20,010. Shareholders: 70,959.

FINANCES

The Sinclair & Valentine subsidiary, a maker of printing products, was sold to Frye Industries for about \$29 million in 1971. In 1970, S&V had pretax earnings in excess of \$3 million on sales of about \$55 million.

Investment tax credits in 1971 totaled \$3,420,000, compared with \$1,160,000 in 1970.

CAPITALIZATION

LONG TERM DEBT: \$207,803,597, incl. \$50 million 6% sub. deb. due 1994; conv. into com. at \$26.50 a sh.

MINORITY INTEREST: \$29,635,415.

4 1/2% CUM. PREFERRED STOCK: 40,000 shs. (\$100 par).

COMMON STOCK: 23,297,221 shs. (\$1 par).

Incorporated in MD in 1961. Office—277 Park Ave., NYC 10017. Pres.—J. D. Knuth. Secy.—J. H. Kuttroff. Treas.—R. J. Morris. Dir.—G. M. Bunker (Chm.), W. A. Burns, J. E. D. Grunow, W. W. Hagerly, J. L. Hangan, L. A. Harvey, C. E. Jones, R. M. McKenna, J. E. Muckley, I. G. Pownall, J. D. Knuth, G. S. Trimble, Jr., E. M. Tuckett. Transfer Agents—First National City Bank at New York, NYC; Maryland National Bank, Baltimore; American National Bank & Trust Co., Chicago; Bank of America, Los Angeles; Registrars—Bankers Trust Company, NYC; Mercantile-Sale Deposit & Trust Co., Baltimore; Continental Illinois National Bank & Trust Co., Chicago; United California Bank, Los Angeles.

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**EXHIBIT 3 - MARTIN MARIETTA ALUMINUM ANSWERS TO SECOND
SET OF INTERROGATORIES NO.5**

During the years 1966, 1967, 1968, 1969 and subsequently Harvey Aluminum (Incorporated), which has since changed its name to Martin Marietta Aluminum Inc., did not manufacture any of the components of the 105mm. M-1 cartridge used in the Howitzer Artillery Gun, 105mm. Model 102. On information and belief, and as previously indicated in the answers to Plaintiffs' Interrogatories Nos. 3 and 4 (first set), a subsidiary, Martin Marietta Aluminum Sales Inc., formerly Harvey Aluminum Sales Co. did assemble fuses and some components of fuses used in that type of cartridge. Martin Marietta Aluminum Sales Inc. has not been named as a party to this action.

INTERROGATORY NO. 4:

4. For each of questions 1 through 3 answered yes, describe in detail exactly what you manufactured.

ANSWER:

Not applicable.

INTERROGATORY NO. 5:

5. State the dates and places of manufacture.

ANSWER:

On information and belief, Martin Marietta Aluminum Sales Inc. operates the Milan Army Ammunition Plant located in Milan, Tennessee, at which plant fuses and fuse components of the type mentioned in Interrogatory 3 are assembled.

INTERROGATORY NO. 6:

6. State the full names and present or last known addresses and job capacity of the individual or individuals responsible for said manufacture.

ANSWER:

See answers to Interrogatories 3 and 5.

TRANSCRIPT OF PROCEEDINGS BEFORE CANNELLA, D.J. ON
MARCH 26, 1974

JA28

jbbr

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----- x

DORMAN L. BAIRD, et al., :

Plaintiffs, :

-against- : 71 Civ. 3205 (JMC)

DAY & ZIMMERMAN, INC., et al., :

Defendants. :

----- x

Before:

HON. JOHN M. CANNELLA,

District Judge

New York, March 26, 1974

APPEARANCES

JULIEN, BLITZ & SCHLESINGER, P.C., Esqs.,
Attorneys for Plaintiff,

By: Jesse Alan Epstein, Esq., of Counsel

DEWEY, BALLANTINE, BUSHBY, PALMER & WOOD, Esqs.,
Attorneys for Defendant,

By: Paul Sherman, Esq., of Counsel

jbbr

2

(Case called.)

THE COURT: Now, I can give you until about twenty-three or twenty-four after ten, because I have a jury coming in.

Can you conclude in that time, do you think?

MR. SHERMAN: Well, your Honor, we were only planning to take around 15 minutes in total.

THE COURT: All right. Take whatever you want but if you can't finish, we will have to adjourn it until another time.

MR. EPSTEIN: I'll try to conclude in that time.

THE COURT: Fine.

MR. SHERMAN: I assume that you would want the moving party to call the first witness, your Honor.

THE COURT: I couldn't care less, whichever order you agree on, as long as I get the evidence before me.

MR. SHERMAN: In that case, the defendant will call Richard E. Guthrie.

1 jbbbr

Guthrie-direct

3

2 R I C H A R D E. G U T H R I E, called as a witness
3 by the defendant, having been first duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. SHERMAN:

7 Q Mr. Guthrie, do you hold a position with any
8 corporation?

9 A Yes, I do.

10 Q Are you an officer of any corporation?

11 A Yes, I am.

12 Q What corporation are you an officer of?

13 A I am an officer of Martin Marietta Aluminum
14 Sales, Inc.

15 MR. SHERMAN: Perhaps we could agree, since there are
16 three corporations with similar names here, to have some
17 sort of a method of referring to these various corporations.

18 THE COURT: All right. Select whatever one you
19 want and we will continue to do that throughout the record.

20 Is this the parent organization?

21 MR.SHERMAN: No. The defendant in this case
22 is a subsidiary, Martin Marietta Aluminum.

23 THE COURT: What do you want to call this?

24 MR.SHERMAN: I would suggest we call that
25 Aluminum.

1
2 THE COURT: Is that convenient?

3 MR. EPSTEIN: That is fine.

4 MR. SHERMAN: The parent is Martin Marietta
5 Corporation, and I suggest we call that Martin Marietta.
6 The subsidiary of the defendant is Martin Marietta Aluminum
7 Sales, and I suggest we call that Sales.

8 THE COURT: Either that or Aluminum Sales. If
9 Sales is convenient, all right.

10 Q Would you tell us what your title is?

11 A I am the assistant secretary of Sales, Inc.

12 Q What are your duties?

13 A I assist in the preparation of the corporate
14 records of the company and act whenever the secretary is
15 unavailable to that.

16 I qualify the corporation in the states it does
17 business, and I have the custody of the books and records
18 of the company.

19 MR. SHERMAN: At this time, your Honor, I would
20 like to introduce a certificate signed by the Secretary of
21 State of the State of California, certificate of good standing,
22 coupled with a photocopy of an amendment to the articles of
23 incorporation of Martin Marietta Aluminum Sales, together with
24 two similar documents relating to Martin Marietta Aluminum.

25 MR. EPSTEIN: No objection.

jbbbr

Guthrie-direct

5

THE COURT: Received.

(Defendants' Exhibit A was received in evidence.)

MR.SHERMAN: At this time I would also like to have marked a copy of a contract.

MR. EPSTEIN: No objection.

THE COURT: Received.

(Defendants' Exhibit B was received in evidence.)

Q Mr. Guthrie, I show you this contract. Can you tell us what that is?

A This is a contract between the two companies we have identified as Aluminum and Sales with the names that these companies had at the time the contract was signed.

Both of them have changed their names to their current names.

Q What is the date of that?

A The contract is dated October 1, 1966.

Q Do you know whether that contract is still in force?

A Yes, I do, and it is still in force. It is a contract appointing Sales as the independent contractor to solicit products manufactured by Aluminum, and pay a commission on that solicitation and service.

jbbr

Guthrie-direct

6

THE COURT: You have been referring to Exhibit B all along, have you not?

MR. SHERMAN: Yes, your Honor, he has.

Q Did Sales perform any services under this contract during the year 1971?

A Yes, they did.

Q What did the services consist of?

A They sold, promoted aluminum products manufactured by the parent throughout the United States; acted as a liaison between the manufacturing plants of Aluminum and the ultimate customers of the aluminum products manufactured in those plants.

Q Were payments made by Aluminum to Sales under this contract?

A Yes. Aluminum pays Sales an agreed upon percentage of the value of the products sold.

Q What is that percentage?

A 2-1/4 per cent.

Q You said of the products sold. You also testified, I believe, that Sales solicits orders.

A Yes, they do.

Q Does Aluminum pay the commission on sales that are solicited as opposed to sales that are actually consummated?

jbbr

Guthrie-direct

7

A No. The commission is paid only on products sold and shipped.

There are a number of orders taken which are rejected.

MR. SHERMAN: Your Honor, may we have the affidavit of Mr. Guthrie which was previously submitted in this case deemed marked, or should we mark a copy of it?

THE COURT: No. I think it's deemed marked; it is in the papers, isn't it?

MR. SHERMAN: Yes.

THE COURT: It will be deemed marked and it can be Defendant's Exhibit C, deemed marked.

(Defendants' Exhibit C was deemed marked.)

Q Mr. Guthrie, I refer you to the affidavit that is deemed marked as Defendants' Exhibit C and I ask you to look at that affidavit and tell us if that affidavit represents your present understanding of the facts in this matter.

A Yes, with an exception.

Q Would you tell us what that exception is?

A I am looking for the correct -- it's an exception, an omission, not of a fact, in there.

In looking through the books and records of the company and contacting the employees that are familiar with

1 jbbbr

2 this particular case and the relations between Aluminum and
3 Sales prior to the time I joined the company, I stated that
4 we had an office in 1971 in the State of New York, in the
5 County of Queens.

6 In addition to that office, I find that we also
7 had an office in the suburb of Buffalo, New York, a town
8 called Hamburg. That office has since been terminated,
9 as was the one in Queens but it was not mentioned in the
10 affidavit because I was not aware of its existence.

11 A different gentleman had the lease, and I found
12 it three or four days ago.

13 Q As far as the Hamburg, New York operation is con-
14 cerned, about how many employees did that have?

15 A I believe it had two salesmen and one secretarial
16 employee one clerk-secretary.

17 Q In your affidavit you also mentioned some figures
18 as far as sales in New York as a percentage -- sorry,
19 you did not.

20 Can you estimate what the percentage of sales
21 by both of these offices that were solicited on behalf of
22 Aluminum were in 1971 in New York?

23 A I am not sure I can on solicited. In terms of
24 shipments, I think it's slightly in excess of the 3 per cent
25 of the total nationwide income of sales, Martin Marietta

1 Aluminum Sales, Inc..

2 The Buffalo office was smaller in total sales
3 and commissions than was the Queens office.

4 Q Do you have any idea of the total dollar volume
5 of the two offices?

6 A Shipments?

7 Q And shipments, actually accepted orders that were
8 shipped.

9 A I have an idea of the commission income and I
10 can work backwards.

11 The commission income from the two was about
12 \$97,000 or \$98,000 and that would be 2-1/4 per cent of the
13 shipment figures.

14 Q Other than those two offices, did Sales maintain
15 any other offices in New York in 1971?

16 A No, sir, they did not.

17 Q Does Sales maintain separate bank accounts from
18 Aluminum?

19 A Yes. I believe there are approximately 13 bank
20 accounts that Sales maintains.

21 Q Does Sales maintain separate corporate and
22 financial records, such as general ledgers?

23 A Yes, they do.

24 Q As far as the leases that you mentioned are
25 concerned, who were those leases between?

1 jbbbr

2 A The landlord of the offices that we rented and
3 Martin Marietta Aluminum Sales, Inc., or, at that time,
4 its predecessor name, the same corporation.

5 Q Finally, who paid the salaries of the personnel
6 of Sales in New York?

7 A The sales company, Martin Marietta Aluminum Sales,
8 Inc.

9 MR.SHERMAN: No further questions.

10 CROSS EXAMINATION

11 BY MR. EPSTEIN:

12 Q Did Sales sell aluminum products manufactured by
13 companies other than Martin Marietta Aluminum during 1971?

14 A Not unless it would have been on an exchange
15 basis, where we exchanged our product for another manufacturer's
16 but that's not a particular prevalent practice.

17 Q In other words, Sales was basically the sales arm
18 of the Martin Marietta Aluminum?

19 A Yes, sir.

20 Q For how long did Sales maintain its office in the
21 Borough of Queens, New York? You said there was an office
22 in 1971.

23 How long had that office been in existence?

24 A May I correct my answer to your previous question,
25 sir?

jbbr

Guthrie-cross

11

Q Certainly.

A You said was it the sales arm of the Martin Marietta Aluminum. Yes and no. It was the sales arm for aluminum products.

Martin Marietta Aluminum Sales, Inc., also manufactures titanium products, high grade steels, in small dollar amounts and has an operation that is called Harcraft, a branded name of plumbing lines and those were not sold through Martin Marietta Aluminum Sales, Inc. They had their own sales force.

Q What per cent of Martin Marietta Aluminum Products are aluminum, as opposed to other metals?

A It would be, the two operations I was mentioning, what I would call special metals and Harcraft, are fairly small in terms of the manufacturing plants.

There are also a fair number of sales of primary ingot on an export basis, some sales of bauxite and some sales of alumina, and those sales, fairly large dollar amounts, are not handled by Martin Marietta Aluminum Sales, Inc. They are not sales of the Aluminum Company sales.

The Aluminum Company itself sells the alumina or bauxite or pure metal. I am not sure I can give you an exact figure.

I would think that the products of the total parent

1 jbbbr

2 would be in the neighborhood of 80 per cent sold by
3 Aluminum Sales, Inc.

4 Q Aluminum Sales, Inc. sells 80 per cent of the
5 products?

6 A That's a very rough estimate and I would not want
7 to be held to it, but I think it's a fair one.

8 Q Getting back to the office in Queens, New York,
9 which was in existence in 1971, how long had it been in
10 existence before 1971?

11 A I believe there had been an office in New York,
12 not necessarily in Queens, back into about 1963. It was
13 on Jericho Turnpike prior to that.

14 They were normally a three-year lease and, if
15 the district manager chose to move that office closer to
16 where he lived, that was frequently done.

17 I believe the one in Queens was -- I would have to
18 look at the lease to tell you exactly.

19 Q The one in Queens was apparently the same office,
20 then, as the one in Jericho?

21 A Yes. It was the Martin Marietta Aluminum Sales,
22 Inc. office which would be in Jericho and, then, at the
23 expiration of that lease would move to Queens and that
24 lease was cancelled and there was no further office in
25 New York.

1 jbbbr

2 Q Were there about the same number of employees in
3 Jericho as in the Queens office?

4 A Yes, sir.

5 I wouldn't want to say exactly, but, roughly, yes,
6 there was no great deviation.

7 Q The Buffalo office, which you just testified to,
8 how long was that in existence?

9 A I am not familiar with it back of the time that
10 I know when the lease was there and, prior to that, I really
11 couldn't tell you.

12 Q Did they rent or own their property?

13 A What kind of property are you thinking of?
14 The real estate?

15 Q I am talking now about the office in Buffalo.
16 Would you know if they rented or owned that?

17 A The office space was leased space.

18 Q Is Martin Marietta Aluminum Sales authorized
19 to do business in the State of New York?

20 A Yes, sir.

21 Q Are you familiar with the term wholly owned
22 subsidiary?

23 A Yes, sir.

24 Q Martin Marietta Aluminum Sales a wholly owned
25 subsidiary of Martin Marietta Aluminum?

1 jbbbr

2 A Yes, they are.

3 MR. EPSTEIN: I have no further questions.

4 MR. SHERMAN: I have on question on redirect.

5 REDIRECT EXAMINATION

6 BY MR. SHERMAN:

7 Q Could you tell us what percentage of Martin
8 Marietta Aluminum Sales' gross income was obtained through
9 sales or solicitations of orders of Aluminum's products?

10 A The percentage of gross income?

11 Q Book basis income, book value.

12 A I think around 32 to 33, 34, somewhere between
13 31 and 34 per cent of the income, gross income, of Martin
14 Marietta Aluminum Sales, Inc. was obtained from selling
15 aluminum products manufactured by Martin Marietta Aluminum.
16 Inc.

17 RECROSS EXAMINATION

18 BY MR. EPSTEIN:

19 Q Did Martin Marietta Aluminum Sales operate a
20 facility in Milan, Tennessee, assembling a certain product
21 for the United States Government?

22 A Martin Marietta Aluminum Sales, Inc., has a contract
23 with the government to operate a government facility in
24 Milan, Tennessee. I am not sure what product you are
25 talking about. It does manufacture products.

jbbr

Markowitz-direct

15

MR. EPSTEIN: That's all I have.

MR. SHERMAN: That's all.

THE COURT: You may step down.

(Witness excused.)

MR. SHERMAN: I would like to call Mr. Ancel
Markowitz.

A N C E L A. M A R K O W I T Z, called as a witness
by the defendants, being first duly sworn, testified
as follows:

DIRECT EXAMINATION

BY MR. SHERMAN:

Q Would you give us your home address?

A 11815 Blue Spruce Road, Reston, Virginia, 22091.

Q Are you an officer of Martin Marietta Aluminum?

A Yes, I am.

Q What title do you hold?

A Assistant treasurer.

Q What are your duties as assistant treasurer?

A I manage the cash, I oversee the operations of the
credit department and the accounts receivable department.

Q In 1971 where were Aluminum 's corporate head-
quarters?

A In Torrance, California.

Q Do you know whether Aluminum maintained any other

1 jbbbr

Markowitz-direct

16

2 offices or plants or manufacturing facilities elsewhere
3 in 1971?

4 A Yes. They maintained several manufacturing
5 facilities. There was a reduction plant in Dallas,
6 Oregon.

7 Q They were building another reduction plant, about
8 to be completed, in Goldendale, Washington, the State of
9 Washington.

10 They maintained, of course, a manufacturing plant
11 in Torrance, itself, and another manufacturing plant for
12 extrusions in Adrian, Michigan, and a rolling mill in
13 Lewisport, Kentucky.

14 Q Did Aluminum have any other offices, plants or
15 facilities in New York during 1971?

16 A No.

17 Q Do you know whether Aluminum has ever been licensed
18 to do business in New York?

19 A They have not.

20 Q Who was the principal stockholder of Aluminum in
21 1971?

22 A Martin Marietta Corporation.

23 Q Do you know what percentage of stock was owned by --

24 A Yes. 82.7 per cent.

25 Q As far as the 1971 output of Aluminum is concerned,

1
2 do you know what percentage of that output was shipped into
3 the State of New York?

4 A I would say approximately 5-1/2 per cent.

5 Q Do you know how much or what percentage of its
6 output was shipped into the State of New York as the result
7 of solicitations by Sales?

8 A Somewhat under 2. -- I know the number was 2.15,
9 which was completed to be shipped by the two sales offices,
10 but my understanding is that part of that 2.15 went to
11 Connecticut and New Jersey so it is something under that.

12 I don't know the exact percentage.

13 Q Do you know what the process by which orders
14 solicited by Sales were transmitted to Aluminum was?

15 A As far as I know, Sales solicited the orders and
16 then the orders were transmitted directly to Aluminum by the
17 customers and then either accepted or rejected.

18 Q Did rejections occur?

19 A Yes.

20 Q When an order was received and accepted by
21 Aluminum, what then happened?

22 A Aluminum produced the order, wherever it was
23 appropriate to manufacture it, and shipped by common
24 carrier to whatever location was designated.

25 Q Did Alumin have any interest in the common

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2 carriers that were utilized?

3 A No.

4 Q Do you know the terms of shipment?

5 A FOB point of manufacturer.

6 Q In 1971 did Aluminum pay commissions to Sales?

7 A Yes, they did.

8 Q Do you know how they were calculated?

9 A On the basis of 2-1/4 per cent of those sales
10 generated by solicitations throughout the country.

11 Q Do you know anything about the advertising policies
12 or practices adopted by Aluminum or Sales?

13 A No, I do not.

14 MR.SHERMAN: No further questions.

15 CROSS EXAMINATION

16 BY MR. EPSTEIN:

17 Q Mr. Markowitz, in 1971, did Aluminum pay any money
18 to the Martin Marietta Corporation for any sort of services
19 performed by the Martin Marietta Corporation?

20 A Yes, I think they did.

21 Q Would you know how much that was?

22 A My recollection is that it was approximately
23 \$1,330,000.

24 Q What services did Martin Marietta perform for
25 Aluminum?

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Markowitz-cross

19

2 A Martin Marietta Corporation perform?

3 Q Yes.

4 A Management services of various kinds, including,
5 and I believe that in that calculation there was a percentage
6 of overhead, Martin Marietta Corporation overhead, but
7 management services -- I'm not quite sure, you know, how to
8 further define that; I am not familiar with the specific
9 services performed.

10 Q Where is Martin Marietta located? This is the
11 parent corporation.

12 A In New York City.

13 Q Would you know if these management services were
14 performed at all in New York City?

15 A I don't know.

16 Q When you say Martin Marietta is located in New
17 York City, what type of office do they have in New York City
18 or do they have a manufacturing plant?

19 A As far as I know, they don't have a manufacturing
20 plant. They have offices on Park Avenue. I have never
21 visited them.

22 Q Would these be the offices where the executive
23 officers of Martin Marietta Corporation have their offices?

24 A Yes.

25 Q Would they be these executive officers who would

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2 be engaging in the management services for Martin Marietta
3 Aluminum?

4 A I would have to assume that some of the services
5 were performed by these officers. I don't know whether
6 all of the management services were performed by these
7 officers.

8 Q In connection with these services performed for
9 Aluminum, did Aluminum employees or officers come into the
10 State of New York in 1971?

11 A I do not know. I joined the company in 1972,
12 January of '72. I don't know.

13 Q How about in 1972, then? Were similar services
14 performed for Aluminum by Martin Marietta?

15 A Yes.

16 Q About how much was that in dollar amount?

17 A I don't know the amount in 1972.

18 Q Did Aluminum employees or officers come into the
19 State of New York in connection with these services?

20 A On occasion, yes.

21 Q How about 1973? Did employees or officers come
22 into the State of New York in connection with similar
23 services performed by Martin Marietta?

24 A On occasion, yes.

25 MR. EPSTEIN: May I refer to documents now which we

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2 have already marked between us?

3 Q I would like to show you what has been marked
4 as Plaintiffs' Exhibit 25.

5 Can you identify that?

6 A Yes. This is the annual report of the
7 Martin Marietta Corporation for 1972.

8 Q When it says 1972 annual report, what year is that
9 referring to? In other words, the matter contained in that
10 concerns what year?

11 A The calendar year 1972.

12 Q I would like to direct your attention to page 11
13 of this report.

14 Do you see there a page which is headed "Aluminum,"
15 sir?

16 A That's correct.

17 Q This is in Martin Marietta's annual report, and
18 it apparently describes certain activities with respect to
19 aluminum. These activities, what company was performing
20 these activities described on page 11?

21 A Martin Marietta Aluminum, Inc.

22 Q The company which you are associated with?

23 A Right.

24 Q But it is true that these activities are set forth
25 in Martin Marietta Corporation's annual report?

2 MR. SHERMAN: I would like to object to this whole
3 line of questioning at this point on the ground --

4 THE COURT: I don't know what relevance it has.

5 Are you going to say that it is presumed that the
6 same conditions existed in 1971?

7 MR. EPSTEIN: Well, I think I can prove 1971,
8 also, but my position is going to be not only with all
9 of these companies doing things in New York in 1971, but they
10 continued to do them.

11 THE COURT: Well, I am not too much interested in
12 what they continued to do. What I am interested in is what
13 was the condition at the time that this thing occurred,
14 the services.

15 MR. SHERMAN: I would also like to object on the
16 grounds, in addition to that, that the evidence of the
17 presence of the parent cannot be used to establish juris-
18 diction over a subsidiary in a state.

19 THE COURT: Well, that would be a matter of argument
20 and I will hear argument from both sides but, has this been
21 marked in this case or is this in a deposition or something?

22 MR. EPSTEIN: We marked this pursuant to agreement.

23 THE COURT: Well, let the clerk put the official
24 number on it.

25 There is no objection to it?

2 MR.SHERMAN: No objection, your Honor.

3 THE COURT: Received.

4 MR.SHERMAN: Subject to the preceding objections
5 to its whole relevancy.

6 THE COURT: On that ground, I sustain it and
7 we will simply mark it for identification. I have already
8 ruled it is not relevant to the issue before me but mark
9 it for identification.

10 (Plaintiffs' Exhibit 25 was marked for
11 identification.)

12 Q Mr. Markowitz, I show you another exhibit which we
13 previously marked between us as Exhibit 20.

14 Can you identify that?

15 A That is a form 10-K for the Securities and
16 Exchange Commission, of Martin Marietta Corporation.

17 Q Does that describe the activities of Martin
18 Marietta Corporation?

19 MR. SHERMAN: May we have a date on that, your
20 Honor?

21 Q Do you know what date this refers to?

22 A For the fiscal year ended December 31, 1971.

23 Q From that description, would you gather that that
24 means January 1, 1971, to December 31, 1971?

25 A Yes.

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2 Q Does this document describe activities of Martin
3 Marietta Corporation?

4 A I have not read it but, ordinarily, a 10-K will
5 describe the activities of the company to which it pertains.

6 Q And this 10-K would describe the activities of
7 Martin Marietta for 1971, correct?

8 A Martin Marietta Corporation.

9 MR. SHERMAN: I object.

10 THE COURT: The exhibit speaks for itself.
11 Sustained.

12 Q I show you page 4 of Exhibit 20, wherein appears a
13 section devoted to Aluminum.

14 Would you look at that section, please?

15 A Yes.

16 Q Are the activities described in that section the
17 activities of Martin Marietta Aluminum Corporation?

18 MR. SHERMAN: Objection, your Honor.

19 THE COURT: Sustained. The document speaks for
20 itslef.

21 MR. EPSTEIN: May I offer this document in evidence,
22 your Honor?

23 THE COURT: Is there any objection?

24 MR. SHERMAN: I will object on the same grounds
25 that I reiterated before, with respect to the prior exhibit,

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2 25.

3 THE COURT: Well, I am taking it subject to con-
4 nection. I don't know that it can be used in the way
5 in which you are attempting to use it. If what he says is
6 so, and he has cases that stand for that, then, of course,
7 I would be obliged to disregard it.

8 On the other hand, if you have cases that show
9 it can be used, I will consider it.

10 It will be marked in evidence, subject to that
11 condition.

12 (Plaintiff's Exhibit 20 was received in
13 evidence.)

14 Q Would you know the dollar amount of Aluminum,
15 Martin Marietta Aluminum Sales -- talking now about the
16 Martin Marietta Aluminum Sales which were shipped into the
17 State of New York in 1971?

18 A Approximately \$11 million.

19 Q Would you know the amount for 1970?

20 A No, I do not.

21 Q Would you know for how long Martin Marietta
22 Aluminum has been shipping products into the State of
23 New York before 1971?

24 A I do not know how long.

25 Q When was Martin Marietta Aluminum founded?

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2 A I believe in 1942.

3 Q When it was founded, was it engaged in the business
4 of selling aluminum?

5 A I do not know.

6 Q When did your present involvement with the company
7 begin?

8 A January 31, 1972.

9 MR. EPSTEIN: I have no more questions of this
10 witness.

11 MR. SHERMAN: No other questions, your Honor.

12 THE COURT: That's all.

13 (Witness excused.)

14 MR. SHERMAN: Finally, your Honor, I would like
15 to call Charles T. Olson.

16 C H A R L E S T. O L S O N, called as a witness

17 by the defendants, being first duly sworn, testified
18 as follows:

19 DIRECT EXAMINATION

20 BY MR. SHERMAN:

21 Q Mr. Olson, could you give us your home address,
22 please?

23 A 118-16 Stuart Mill Road in Upton, Virginia.

24 Q Drawing your attention to the year 1971, where
25 were you employed?

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2 A I was employed by Martin Marietta Aluminum Sales.

3 Q Where was that?

4 A Part of the year was in the Chicago area and the
5 final part of the year in the New York area.

6 Q Can you tell us when your activity in the
7 New York area began?

8 A It would have to be, like, the second week of
9 November of 1971.

10 Q What was your position at the time?

11 A Regional Sales Manager.

12 Q What duties did that involve?

13 A I was responsible for maintaining a field sales
14 force -- essentially, training, guiding, directing, their
15 efforts towards specific goals or objectives within a
16 budget.

17 Q Did you have any other duties or responsibilities?

18 A No.

19 Q Where was your office located?

20 A It was located in Forest Hills, Queens, at 108th
21 and Queens Boulevard.

22 Q How many employees were there?

23 A There were four salesmen and, well, there was one
24 girl, two at brief intervals.

25 Q What was the function of this office?

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2 A To solicit orders for aluminum products.

3 Q For whom did this office solicit orders for
4 aluminum products?

5 A We were soliciting orders as Aluminum Sales for
6 products produced by Aluminum.

7 Q And do you know, first of all, the procedures which
8 were followed in soliciting these orders, and could you
9 describe them?

10 A Well, each of the salesmen were assigned specific
11 geographical territories in which they were to use whatever
12 information was available to ferret out manufacturers using
13 aluminum in their products and, then, to call on them to
14 solicit their part of the aluminum.

15 Q When an order was solicited, what happened then?

16 A The original order was transmitted to, at that
17 time, executive offices and headquarters in Torrance.
18 It was transmitted to the Torrance plant, at which time
19 they reviewed the order in total and would accept or reject
20 it based on a number of criteria.

21 Q What criteria were used for rejecting orders by
22 Aluminum?

23 A Well, there were several. Credit rating of a
24 customer; his specific specifications sometimes are too
25 tight or too tough for us to produce; if it was a -- sometimes

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2 it was a delivery schedule that was impossible to meet.

3 There were probably others but those would be
4 the major ones.

5 THE COURT: Where is Torrance?

6 THE WITNESS: Los Angeles suburb.

7 MR. SHERMAN: Again, there is an affidavit in
8 this case I would like to have deemed marked.

9 THE COURT: Is it his?

10 MR. SHERMAN: Mr. Olson's.

11 THE COURT: Deemed marked Exhibit D for the
12 defendant.

13 (Defendants' Exhibit D was deemed marked.)

14 Q Mr. Olson, did you sign this affidavit that has
15 been marked as Exhibit D?

16 A Yes, I did.

17 Q Have you reviewed it, recently?

18 A Yes.

19 Q Does that affidavit reflect your present under-
20 standing of the facts?

21 A Yes.

22 Q One last question.

23 Do you know any of the practices or policies that
24 were followed by your office during 1971 with respect to
25 advertising?

1
2 A Yes. We had yellow pages advertising and, in
3 addition, we had copies of -- reprints of advertising that
4 was, or that had appeared previously in some of the national
5 magazines.

6 This would have been -- well, we had copies of
7 those ads, reprints, as they are called, that occasionally
8 accompanied either a letter soliciting business or, and
9 in some cases it might have been a quotation that was sub-
10 mitted, and that one of these might have accompanied.

11 Q These advertisements or reprints that you are
12 referring to, did they refer to your office under the name
13 of Harvey Aluminum Sales, Inc. or Harvey Aluminum?

14 A Harvey Aluminum Sales, Inc.

15 Q Did you have any stationery or cards?

16 A Yes, and that said Sales, Inc., also. Cards, the
17 letterheads, both.

18 Q Did these various publications or stationery items
19 also have reference to Harvey Aluminum?

20 A Yes, there is a registered trademark, log sort of
21 thing, that always accompanied it, has also appeared on many
22 of the products as shipped.

23 MR. SHERMAN: No further questions.
24
25

CROSS EXAMINATION

BY MR. EPSTEIN:

Q With respect to your last comment concerning advertising, did you have an ad in the New York, Manhattan Yellow Pages, under the name of Harvey Aluminum while the office was under your management?

A It was listed under sales.

Q I don't know what you mean by that.

A I say it was, by the definition we have been using, it was listed as Harvey Aluminum Sales, Inc.

Q I would like to show you a document to see if you recognize it.

MR. SHERMAN: May we have the date of this?

MR. EPSTEIN: This (showing).

MR. SHERMAN: All right.

Q Do you recognize this document?

A Yes.

Q What is it?

A Well, I don't -- I recognize it as a photocopy of a yellow pages box advertisement. I don't recognize it as necessarily being the one that was in the book at that time, although I recognize the box.

Q Is this an advertisement which reflects the sales office in Queens?

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2 A This one says -- this one says Jericho, doesn't
3 it?

4 Q Well, does it reflect the sales office in Jericho,
5 then?

6 A Yes.

7 Q Harvey Aluminum Sales, Inc., Jericho?

8 A Yes.

9 Q Do you know what period of time the Jericho office
10 was in existence?

11 A I do not.

12 MR. SHERMAN: I will object to this whole line,
13 your Honor, in that case.

14 THE COURT: Well, he hasn't said anything except
15 that one thing, that he sees there that it says that he
16 doesn't even adopt it. All he says is that he sees there
17 is a photostat there and that's what it says.

18 He has no personal knowledge of his own.

19 Mark that for identification. What is that?

20 MR. EPSTEIN: We can deem it marked. It's
21 Exhibit 1 to an affidavit that we submitted in opposition
22 to their motion to attack jurisdiction.

23 THE COURT: Deemed marked, then.

24 (Plaintiffs' Exhibit 1 deemed marked.)

25 Q How long have you been working for Harvey Aluminum

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2 Sales, Martin Marietta?

3 A It was Harvey at the time I started, but I started
4 in 1965, October.

5 Q Were you working in the New York area before you
6 undertook to manage the Queens, New York, office?

7 A No.

8 Q Are you familiar with an office of Harvey
9 Aluminum Sales in the Buffalo, New York, area?

10 A Only to the extent that I knew one existed.

11 Q Do you know or did you know for how long that
12 office existed?

13 A No, I don't.

14 MR. EPSTEIN: I have no further questions.

15 MR. SHERMAN: No further questions, your Honor.

16 THE COURT: You may step down.

17 (Witness excused.)

18 THE COURT: That's the defendants' presentation?

19 MR. SHERMAN: Yes.

20 THE COURT: Is there anything you wanted to pro-
21 duce?

22 MR. EPSTEIN: Your Honor, I would like to introduce
23 certain documents which we have marked.

24 THE COURT: Get them, then.

25 If there is no objection, I'll take them.

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2 MR. SHERMAN: We have no objections as to the
3 authenticity of the documents, your Honor, and that they are
4 what they purport to be.

5 We would like to know why the plaintiff is intro-
6 ducing them and what he feels they show, so that we can
7 object on the grounds of relevance.

8 THE COURT: Go ahead.

9 MR. EPSTEIN: Fine. This hasn't been marked.
10 This is Notice of Annual Meeting of Stockholders from Harvey
11 Aluminum Incorporated, dated March 15, 1971, wherein on
12 Page 13 it recites that Harvey Aluminum, now Martin
13 Marietta Aluminim paid about \$232,500 in management services
14 and other services to the Martin Marietta Corporation,
15 and I am introducing this document to show that by this payment
16 Martin Marietta Aluminum itself was doing business in
17 New York, inasmuch as there had to be consultation.

18 I am going to argue that there had to be consul-
19 tation between Martin Marietta Aluminum and Martin Marietta
20 Corporation, which corporation had its executive offices
21 on Park Avenue, New York City.

22 MR. SHERMAN: I will reiterate my objection.

23 THE COURT: I will take it subject to connection.

24 (Plaintiffs' Exhibit 2 was received in
25 evidence.)

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2 MR. EPSTEIN: I would like to introduce what
3 has already been marked as Exhibit 4, which is headed
4 "Harvey Aluminum Sales, Inc., Field Representation Fee,
5 2.25 Per Cent, Year Ended December 31, 1971," and which
6 lists --

7 MR. SHERMAN: No objection.

8 THE COURT: Received.

9 MR. EPSTEIN: It is for the purpose of showing
10 the sales in New York during that period.

11 (Plaintiffs' Exhibit 4 was received in
12 evidence.)

13 MR. EPSTEIN: I would like to introduce a
14 document which has not been marked. It is the Form S-1
15 for Harvey Aluminum Incorporated.

16 It states in red on the top, "As filed with the
17 Securities and Exchange Commission May 18, 1971."

18 THE COURT: I will tell you what I am going
19 to do. I am going to give you an opportunity, both of you,
20 to submit something within a week's time based on these
21 documents, what you say they say they say, so just mark it
22 and let's get on because I am getting close to my jury
23 time.

24 MR. EPSTEIN: Fine. We are introducing this,
25 then.

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2 MR.SHERMAN: Subject to his Honor's rulings, I
3 have no objection. We don't have the right to object
4 to it subsequently, is that right, your Honor?

5 THE COURT: No. It is not subsequently. You
6 are objecting to it now and I will rule on it as I pass
7 on the motion. If I find that it is a valid argument and
8 that it is legally allowable, I will consider it.

9 If I don't, I will simply disregard it or indicate
10 that I am disregarding it.

11 It is received.

12 (Plaintiffs' Exhibit 3 was received in
13 evidence.)

14 THE COURT: It is received subject to the same
15 conditions.

16 MR. EPSTEIN: There was one other item. It is a
17 certificate.

18 Your Honor, that's all I have.

19 THE COURT: All right. Then, is a week's time
20 enough to do this?

21 MR. SHERMAN: I would think so.

22 (Discussion off the record.)

23 THE COURT: Everything is to be submitted by
24 April 5th.

25 Thank you for coming in and bring your exhibits

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2 when you do submit that so that we can look at them.

3 Will you, between the two of you, arrange to get
4 the Court a copy of the transcript?

5 MR. EPSTEIN: Yes, your Honor.

6 MR. SHERMAN: Surely, your Honor.

7 THE COURT: All right, gentlemen.

8 MR. EPSTEIN: Thank you, your Honor.

9 MR. SHERMAN: Thank you, your Honor.

10 - - -

THE COMPANY

Harvey Aluminum (Incorporated) was incorporated under the laws of the State of California in 1942. It is principally engaged in the business of producing primary aluminum and aluminum mill products. It has an aluminum reduction plant located at The Dalles, Oregon and is constructing a second aluminum reduction plant, expected to be completed in the summer of 1971, near the John Day Dam in the State of Washington. The Company has a plant producing aluminum extrusions and forgings and automatic screw machine products at Torrance, California (which plant includes an aluminum sheet and foil mill), an aluminum extrusion plant at Adrian, Michigan, a large aluminum rolling mill located at Lewisport, Kentucky and an alumina plant located at St. Croix, United States Virgin Islands. The Company also makes titanium, zirconium, brass and steel and other products, and has interests in a bauxite mining project in the African Republic of Guinea and in a Norwegian reduction and fabricating plant. In addition the Company manages a United States Government ordnance plant at Milan, Tennessee. The Company's principal offices are located at 19200 South Western Avenue, Torrance, California 90509 (Telephone No. 213-775-2181). The term "Company" includes subsidiaries unless the context otherwise requires.

Martin Marietta Corporation owns 82.7% of the outstanding capital stock of the Company. See "Martin Marietta Corporation".

SUBSCRIPTION OFFER

The Company is currently offering to the holders of its Common Stock the right to subscribe for an aggregate of 1,321,420 shares of Common Stock (the "Additional Stock") at an aggregate subscription price of \$..... (the "Subscription Offer"). The Subscription Offer, which is being made by another prospectus relating to the Subscription Offer, will expire on July 6, 1971. Martin Marietta Corporation has stated that it intends to subscribe and pay for 1,092,394 shares of the Additional Stock, the full number of such shares covered by the subscription rights which it will receive as a result of the Subscription Offer, concurrently with the closing of the sale of the Debentures.

Kuhn, Loeb & Co., Blyth & Co., Inc. and Tucker, Anthony & R. L. Day have severally agreed to purchase and the Company has agreed to sell to them, severally, the remaining 229,026 shares of Additional Stock which are not subscribed for by the exercise of rights. The minimum estimated net proceeds to the Company from the sale of the Additional Stock is \$.....

USE OF PROCEEDS

Under two revolving credit agreements with United States banks, the Company had borrowed a total as of March 31, 1971 of \$71,000,000 which was used for working capital purposes and for the purpose of defraying a portion of the construction costs of the Company's new reduction plant located near the John Day Dam in the State of Washington (see "Business—Primary Aluminum and Electric Power"). It is anticipated that by June 15, 1971 borrowings under such agreements will amount to approximately \$98,000,000, of which \$33,000,000 will have been used for working capital purposes and \$65,000,000 for the construction of the John Day reduction plant.

It is anticipated that the Company will obtain a loan from the United States Economic Development Administration in the amount of \$10,000,000 which will be used to provide a portion of the remaining construction cost for the John Day reduction plant (see note 5 to "Capitalization"). The net proceeds from the sale of the Debentures and the Additional Stock referred to above (estimated to total approxi-

On May 14, 1971 the closing price of the Common Stock on the New York Stock Exchange was \$26.00.

MARTIN MARIETTA CORPORATION

As of April 29, 1971, Martin Marietta Corporation, a Maryland corporation, with corporate headquarters at 277 Park Avenue, New York, New York, owned beneficially and of record 5,461,968 shares of Common Stock or 82.7% of the outstanding Common Stock of the Company. By reason of such ownership Martin Marietta Corporation may be a "parent" of the Company under the Securities Act of 1933, as amended, and the Rules and Regulations thereunder.

George M. Bunker, Joseph E. Muckley and Thomas G. Pownall, who are directors of the Company, are, respectively, President, Executive Vice President and Vice President, and Messrs. Bunker and Muckley are each directors, of Martin Marietta Corporation. In addition, J. Donald Rauth, a director and President of the Company, is a Vice President and director of Martin Marietta Corporation.

Martin Marietta Corporation's corporate staff provides to the Company various corporate services, including general management, financial, industrial relations and other administrative services. During 1970, the Company paid Martin Marietta Corporation \$232,500 for such services rendered during the latter part of 1970. The Company estimates on the basis of current accruals that payments for such services in 1971 will amount to approximately \$1,250,000. Fees for such services are based on an allocation of related overhead costs of Martin Marietta Corporation. The Company's management believes that the fees paid for these services do not exceed charges which would be paid by the Company if the services were performed by non-affiliated persons.

DESCRIPTION OF THE DEBENTURES

The Debentures are to be issued under an Indenture dated as of June 15, 1971 ("Indenture"), between the Company and Morgan Guaranty Trust Company of New York, as Trustee ("Trustee"). A copy of the Indenture in the form in which it is to be executed is filed as an exhibit to the Registration Statement. The following statements are brief summaries of certain provisions of the Indenture and are subject to the detailed provisions of the Indenture, to which reference is hereby made for a complete statement of such provisions. Wherever particular provisions of the Indenture or terms defined therein are referred to herein, such provisions or definitions are incorporated by reference as part of the statements made, and the statements are qualified in their entirety by such reference.

The Debentures are to mature June 15, 1996, and will be limited to \$50,000,000 aggregate principal amount. Interest at the annual rate set forth on the cover page of this Prospectus will be payable semi-annually on June 15 and December 15 to the persons in whose names the Debentures are registered at the close of business on the May 31 and November 30 next preceding such June 15 or December 15, and may be paid by checks mailed to such persons. (§§ 2.03 and 5.01)

Principal and premium, if any, on the Debentures and interest payable on redemption of Debentures will be payable at the corporate trust office of the Trustee in New York, New York. Debentures may be presented at such office for registration of transfer or exchange without any service charge and subject to the limitations provided in the Indenture. (§§ 2.03, 5.01 and 5.02)

The Debentures will be issued in fully registered form only, in denominations of \$1,000 and any multiple of \$1,000, and may be transferred, combined or split up without payment of any charge other than stamp taxes or other governmental charges. (§§ 2.03 and 2.05)

ALUMINUM

Martin Marietta is engaged in the business of producing primary aluminum and aluminum mill products, through its ownership of approximately 82.7% of the outstanding common stock of Harvey Aluminum (incorporated). The remainder of this stock is publicly owned.

The principal products produced by Harvey Aluminum include aluminum pig, ingot, billet, rod, bar, pipe, tube, hollow sections, press forgings, forging stock, hand forgings, impact extrusions, electrical bus bar, rigid conduit, structurals, special shapes, light and heavy press extrusions, screw machine, sheet plate, coil and redraw rod and other aluminum products, alumina, calcined petroleum coke, titanium, zirconium, brass and steel products, and plumbing fixtures and accessories. Harvey Aluminum also manages on a fee basis the operation of the United States Government ordnance plant at Milan, Tennessee. Sales of alumina, primary aluminum and fabricated aluminum products contributed approximately \$178.1 million to Harvey Aluminum's net sales in fiscal 1969*, \$178.7 million in 1970 and \$173.1 million in 1971.

Harvey's primary aluminum, aluminum mill and other products are sold principally to customers in the United States and its territories and possessions, and to a limited extent abroad. The principal purchasers of primary aluminum are other aluminum producers, distributors and independent fabricators. Aluminum mill and fabricated products are sold principally to customers in the building, transportation, aircraft, furniture, appliance and electrical industries. Sales of titanium products are made primarily to customers in the aerospace and defense industries. The Department of Defense of the United States Government is the principal purchaser of Harvey's production of screw machine products.

Total sales of Harvey to the United States Government under prime contracts or subcontracts were approximately 32% of its gross sales in fiscal 1969, 23% in 1970 and 14% in 1971. (See Aerospace—Contracts as to the right of the Government to terminate contracts and renegotiate profits.)

Competition

In selling its primary aluminum and aluminum mill products, Harvey Aluminum principally competes with the other United States and the Canadian producers of aluminum, including several whose sales and resources devoted to the aluminum industry are substantially greater than Harvey's. Competition within the aluminum industry has intensified since the beginning of 1970, principally as a result of an increase in primary aluminum production capacity and the growth of inventories, combined with the ensuing softening of the market for primary aluminum and aluminum products in the United States and abroad.

Total rated capacity of all United States producers of primary aluminum increased from 4,207,000 tons** at the end of 1970 to 4,666,000 tons at the end of 1971. Martin Marietta is aware of published reports indicating that the United States aluminum industry was operating at about 82% of capacity at the beginning of 1972. The idle capacity can readily be brought back into production. Published reports also indicate plans of United States producers to increase annual industry capacity by the beginning of 1973 by approximately 185,000 additional tons, and by the end of that year, 358,000 tons of primary aluminum are also presently scheduled to be purchased by primary aluminum producers from United States Government stockpiles.

Total production by the twelve United States producers was 3,976,000 tons in 1970 and 3,925,000 tons in 1971 and Canadian exports to the United States amounted to 327,000 tons and 463,000 tons in those years respectively. Harvey's primary aluminum production was 89,000 tons in 1970 and 98,000 tons in 1971. Its rated capacity was increased from 91,000 tons to approximately 200,000 tons with the completion of its Goldendale reduction plant in the fall of 1971 (discussed below).

Harvey's shipments of aluminum extrusions and forgings in 1970 and 1971 represented approximately 4.1% of the 897,000 tons shipped by all United States fabricators in 1970 and the 1,000,000 tons shipped by them in 1971. Total shipments of aluminum sheet, plate and coil products by United States producers amounted to 2,125,000 tons during 1970 and 2,275,000 tons during 1971, of which Harvey's shipments represented 4.6% and 6.2%, respectively.

*Harvey's fiscal year was changed in 1970 from the year ended September 30 to the calendar year. References to fiscal 1969 are to the fiscal year ended September 30.

**All references are to short tons (2,000 lbs.).

HARVEY ALUMINUM (INCORPORATED) TO HARVEY ALUMINUM SALES, INC.

SALES AGREEMENT

HARVEY ALUMINUM (INCORPORATED), a California corporation, hereinafter called "Harvey Aluminum", hereby appoints HARVEY ALUMINUM SALES, INC., a California corporation, hereinafter called "Aluminum Sales", its non-exclusive sales agent, upon the terms, conditions and provisions hereinafter stated.

1. The territory to be covered by Aluminum Sales shall be throughout the United States of America and in such other and additional areas as Harvey Aluminum may designate.
2. Aluminum Sales shall use its best efforts to sell and promote the products of Harvey Aluminum and said agency shall include aluminum, aluminum products and other products of Harvey Aluminum. Aluminum Sales in further consideration agrees to provide technical, engineering and liaison service between customers of Harvey Aluminum on any of its aluminum products or other products of Harvey Aluminum.
3. Aluminum Sales shall carry on the foregoing activities in such manner as shall appear to it to best accomplish the purposes expressed in Provision 2.
4. Aluminum Sales shall not handle any products which are competitive to the products of Harvey Aluminum without the consent of Harvey Aluminum.
5. Harvey Aluminum reserves the right to refuse to sell anyone.
6. Aluminum Sales shall in all respects be deemed an independent contractor. This Agreement shall not be assigned by Aluminum Sales either in whole or in part, whether voluntary or involuntary, and whether by operation of law or otherwise, without the written consent of Harvey Aluminum first had and obtained.
7. Harvey Aluminum will set all price schedules, terms and conditions of sale.
8. Aluminum Sales shall pay all of its own costs and expenses.
9. Harvey Aluminum shall pay unto Aluminum Sales two and one quarter per cent (2-1/4%) of the total of products sold by Aluminum Sales for the account of Harvey Aluminum.
10. The sales agency hereby created may be terminated by either party upon thirty (30) days written notice. In the event of termination, Aluminum Sales shall be entitled to commissions on all orders for 30 days after termination but not thereafter.

This Agreement supersedes and cancels any previous agreement.

DATED this 1st day of October, 1966.

HARVEY ALUMINUM (INCORPORATED)

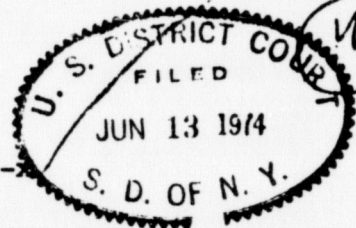
By *[Signature]*

AGREED AND ACCEPTED TO:
HARVEY ALUMINUM SALES, INC.

By *[Signature]*
Assistant Secretary

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



DORMAN L. BAIRD and DORIS J. BURNS,
as Administratrix of the Goods,
Chattels and Credits which were of
WENDELL M. BURNS, deceased, and
DORIS J. BURNS, individually,

MEMORANDUM

Plaintiffs,

:
: 71 Civ. 3205
: (JMC)

-against-

DAY & ZIMMERMAN, INC., REVERE COPPER
& BRASS, INC., HARVEY ALUMINUM (Incor-
porated) and LEAR SIEGLER CO. INC.,

Defendants.

-----x
CANNELLA, D.J.:

The motion of the defendant Martin Marietta Aluminum, Inc. (formerly Harvey Aluminum), pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, to dismiss the complaint as against it for lack of personal and subject matter jurisdiction, is granted.

The plaintiff Baird was injured and the plaintiff Burns' intestate was killed in Vietnam on September 6, 1969, by the explosion of an artillery gun which they were operating in the service of the United

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States Army. Liability is ascribed to the several defendants who are alleged to have manufactured components of the gun's cartridges, fuses and shells.

Citizens of Alabama and Washington, respectively, the plaintiffs caused process to be served on the moving California defendant in California, postulating that at the time of service the defendant was doing business in the State of New York. N.Y. Civil Practice Law and Rules, Sections 301, 313; Federal Rules of Civil Procedure, Rule 4(e). This position is contested by that defendant by this motion.

The primary business of the moving defendant Martin Marietta Aluminum, Inc. ("Aluminum"), is the production and manufacture of aluminum products in California and in four other states outside New York. It is not licensed to do business in New York and has no facilities in that state. It does have a contractual relationship with Martin Marietta Aluminum Sales, Inc. ("Sales"), a wholly owned subsidiary authorized to do business in New York, by which Sales is authorized to solicit orders for Aluminum's products in New York and elsewhere.

There is also evidence that about the time of service of process an advertisement appeared in a New York telephone directory detailing Aluminum's products and listing Sales as the sales agency. The advertisement itself, even if inserted by Aluminum, is "mere solicitation" and will not support the plaintiff's claim. Delaqi v. Volkswagenwerk A.G. of Wolfsburg, Germany, 29 N.Y.2d 426 (1972), 328 N.Y.S.2d 653; Miller v. Surf Props., 4 N.Y.S.2d 475, 176 N.Y.S.2d 318.

The plaintiffs rely strongly upon a presumption of agency arising from the parent-subsidiary relationship of Aluminum and Sales, but the evidence is uncontested that Sales was employed as an independent contractor devoid of authority to bind Aluminum in any way. Sales could solicit orders, but that is all it was empowered to do. It had no right to confirm sales or to set price schedules, or terms or conditions of sales. At best it could try to obtain orders and transmit them to Aluminum at its home office for acceptance or rejection.

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Nor does the fact that substantial dollar amounts of Aluminum's products were sold in New York alter this conclusion: "mere solicitation" or "sales of a manufacturer's product in New York, however substantial, have never made the foreign corporation manufacturer amenable to suit in this jurisdiction." Delagi, supra.

Evidence was brought in at the hearing that the relevant (Aluminum) is a subsidiary of Martin Marietta Corporation ("Corporation"), a Delaware corporation doing business in New York, which owns 82.7% of Aluminum's outstanding shares and that the Corporation's staff provides to Aluminum: "various corporate services, including general management, financial, industrial relations and other administrative services. During 1970, the Company (Aluminum) paid Martin Marietta Corporation \$232,500 for such services rendered during the latter part of 1970. The Company estimates on the basis of current accruals that payment for such services in 1971 will amount to approximately \$1,250,000. Fees for such services are based on an allocation of related overhead costs by Martin Marietta Corporation. The

Company's management believes that the fees paid for the services do not exceed charges which would be paid by the Company if the services were performed by non-affiliated persons." (Ex. 3, p. 23)

Standing alone as it does, this establishes no more than that the parent, for a fee, provided the subsidiary with managerial consulting services such as might be employed in the open market. It does not establish control of the subsidiary by the parent. It was said in this respect in Delagi: "The control over the subsidiary's activities, we held, must be so complete that the subsidiary is, in fact, merely a department of the parent." This has not been shown here.

It is found that upon the facts adduced, the moving corporation was not doing business in New York within the meaning of New York statutes and authorities and that, consequently, personal jurisdiction has not been obtained over the moving defendant, Aluminum. It follows that subject matter jurisdiction also is lacking. See, New York Business Corporation Law, Section 1314;

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Farrell v. Piedmont Aviation, Inc., 411 F.2d 812,
815-816, fn. 4 (2d Cir. 1969), cert. denied, 396 U.S.
840 (1969).

The motion of the defendant Martin Marietta Aluminum, Inc. (formerly and named herein as Harvey Aluminum), to dismiss the complaint as against it for lack of personal and subject matter jurisdiction is granted and the complaint is dismissed as against said defendant.

SO ORDERED.

John M. Cannella
JOHN M. CANNELLA
United States District Judge

Dated: New York, N. Y.
June 13, 1974.

US COURT OF APPEALS: SECOND CIRCUIT

Index No.

BAIRD,

Plaintiffs-Appellants.

against

Affidavit of Personal Service

DAY et al,

Defendants.

STATE OF NEW YORK, COUNTY OF NEW YORK

ss.:

I, Victor Ortega, being duly sworn,
deposes and says that deponent is not a party to the action, is over 18 years of age and resides at
1027 Avenue St. John, Bronx, New York
That on the 4th day of November 1974 at 140 Broadway, New York

deponent served the annexed Joint Appendix upon

Dewey, Ballantine, Bushby, Palmer & Wood
the in this action by delivering a true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the Attorney(s) herein,

Sworn to before me, this 4th
day of november 19 74

Victor Ortega
Print name beneath signature

VICTOR ORTEGA

Robert T. Brin

ROBERT T. BRIN
NOTARY PUBLIC, STATE OF NEW YORK
NO. 31 - 0410000
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES MARCH 30, 1975

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